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THE FREECYCLE NETWORK, INC.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

THE FREECYCLE NETWORK, INC.,
an Arizona non-profit organization,

Plaintiff,

v.

TIM OEY and JANE DOE OEY,

Defendants.

CASE NO. CV 06-173 RCC

**THE FREECYCLE NETWORK, INC.'S
OPPOSITION TO DEFENDANTS'
MOTION TO STAY OR TRANSFER**

Date: June 16, 2006

Time: 11 a.m.

Judge: Hon. Raner C. Collins

Location: Tucson Courtroom 5B

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**I.
INTRODUCTION**

The Freecycle Network, Inc. ("The Freecycle Network"), a non profit organization based in Arizona, is suing Tim Oey and Jane Doe Oey, individually, for Mr. Oey's tortious conduct toward The Freecycle Network. Mr. Oey's tortious conduct toward The Freecycle Network, conduct which Mr. Oey has not disputed at all in any of his pleadings, constitutes trademark disparagement, injurious falsehood, defamation, and intentional interference with business relations. Despite Mr. Oey's earlier opposition to The Freecycle Network's requested injunctive relief based on the claim that this dispute should be in a different forum, this Court issued a TRO and Preliminary Injunction against him. Nothing has changed that makes a transfer (or stay) appropriate given the specific facts of this case.

Deference to The Freecycle Network's choice of its home forum is appropriate. Furthermore, Mr. Oey has purposefully availed himself of Tucson. Mr. Oey provided The Freecycle Network with advice and assistance on many aspects of The Freecycle Network's non-profit business, including its Web site and its trademark policy. Mr. Oey does not dispute that he was a very active and important member of The Freecycle Network and that The Freecycle Network relied upon his strategic business guidance in its day to day business activities.

Moreover, this is not a second-filed lawsuit between the same parties for the same claims. This lawsuit involves the personal liability of Mr. Oey based on his individual conduct against The Freecycle Network. Defendants are not parties to the unrelated lawsuit pending in California that Defendants claim is the "first filed" case. Rather, that case was filed by FreecycleSunnyvale, an unincorporated non-profit association, against The Freecycle Network for intentional interference and a declaratory judgment that The Freecycle Network's mark, FREECYCLE, and the logo for this mark ("Marks"), are generic, and that FreecycleSunnyvale's use of the Marks does not constitute trademark infringement. *See, e.g.,* FreecycleSunnyvale's Amended Complaint at ¶¶ 43, 45. These claims have nothing to do with Mr. Oey as an individual or his conduct, and are not dispositive of The Freecycle Networks' claims against Mr. Oey in this case. Accordingly, the cases are unrelated and there is no reason to transfer or stay this case.

II. FACTUAL BACKGROUND

A. The Freecycle Network

The Freecycle Network is a non-profit organization founded in Tucson, Arizona, that provides forums for recycling and gifting in communities across the nation. The organization was started in Tucson, Arizona, with a single recycling center and its only office and headquarters are located in Tucson. Declaration of Deron Beal in Support of The Freecycle Network's Opposition filed herewith ("Beal Decl.") at ¶ 2. Since its inception in 2003, The Freecycle Network has grown to become the world's largest Internet Web site dedicated to the promotion of reusing, recycling and gifting. The Freecycle Network maintains an internet Web site, www.freecycle.com, which allows visitors to locate their local recycling groups or create one of their own. Through its network, The Freecycle Network encourages and helps to coordinate the efforts of member groups throughout the world to reuse, recycle, and gift goods. Today, The Freecycle Network is a worldwide organization, with thousands of local recycling groups and more than an estimated two million individual members. *See* Declaration of Lisa Kobialka in Support of The Freecycle Network's Opposition filed herewith ("Kobialka Decl."), ¶¶ 2-3, Exhs. 1-2. In fact, The Freecycle Network has approximately 3500 groups worldwide in 67 countries and relies on over 6000 volunteers to make its recycling efforts function internationally. *Id.*

For years, The Freecycle Network has been using the distinctive and now famous trademarks FREecycle and THE FREecycle NETWORK, as well as a company logo. These marks have been used exclusively and continuously and constitute the majority of The Freecycle Network's intellectual property. To protect its intellectual property, The Freecycle Network developed a Trademark and Copyright Policy. *Id.*

B. The Freecycle Network's Claim Against Mr. Oey

Mr. Oey held several prominent positions for The Freecycle Network during 2004 and 2005. He was the head of the New Website Planning Team for The Freecycle Network. He was tasked with leading a group of the top moderators of the Freecycle Network worldwide in compiling a wish list / plan for an entirely new global Web site for the Freecycle Network. As the

head of the New Website Planning Team, Mr. Oey was to provide his recommendations to The Freecycle Network's only office based in Tucson. Beal Decl. ¶ 5.

Mr. Oey was also the head of FreecycleNext, which was a group formed by The Freecycle Network specifically for the moderators of all of The Freecycle Network's local member groups worldwide. The Freecycle Network formed FreecycleNext so that all moderators beyond the top 25 also had a forum to provide a wish list and input for a new global Web site design project. As the head of The Freecycle Network's FreecycleNext group, Mr. Oey was again tasked to collect comments, provide suggestions and make recommendations to The Freecycle Network's only office based in Tucson. *Id.* ¶ 6.

Additionally, Mr. Oey was a member of a The Freecycle Network's Penguin Patrol, an international planning group consisting of some 4-6 worldwide moderators specifically tasked with developing guidelines and policies for the protection of The Freecycle Network's intellectual property, including copyright and trademark protection. Mr. Oey personally drafted and developed The Freecycle Network's Trademark and Copyright Policy and frequently commented on how to improve upon these guidelines and make these guidelines user friendly. *Id.* ¶ 7.

Mr. Oey also published these guidelines to the member groups. He provided advice and made numerous detailed recommendations to The Freecycle Network about multiple aspects of its intellectual property. For example, he provided detailed instructions on how to use, protect and identify The Freecycle Network's intellectual property in emails or to post trademarked and copyrighted information on The Freecycle Network's Web site. In numerous emails, Mr. Oey provided The Freecycle Network with recommendations, suggestions and advice about protecting its intellectual property. *Id.* ¶¶ 8-10; *see also* Kobialka Decl., Exhs. 1-2.

Mr. Oey was also one of four or five leaders of The Freecycle Network's main worldwide moderator group, the Freecycle Modsquad, where rules are discussed and voted on by moderators, binding polls of moderators are taken and official notices are made to moderators worldwide. Mr. Oey shared this worldwide leadership with Mr. Beal himself and two or three other moderators. As a leader of The Freecycle Network's "Modsquad," Mr. Oey was tasked with helping lead this

main group consisting of well over 1000 moderators worldwide at the time, informing worldwide moderators, collecting comments, providing suggestions and making recommendations, once again to The Freecycle Network's only office based in Tucson. *Id.* ¶ 11.

On or around September 15, 2004, the professional relationship between The Freecycle Network and Mr. Oey came to an end because Mr. Oey's conduct was contrary to mission of The Freecycle Network. Based on information provided to The Freecycle Network, such conduct included charging money to members of the local group of The Freecycle Network with which Mr. Oey was a moderator.

After being asked to step down from his place in The Freecycle Network, Mr. Oey began a direct attack on The Freecycle Network's intellectual property, including violating the policies he drafted and recommended to The Freecycle Network, as well as encouraging others to do the same. In fact, Mr. Oey personally disseminated instructions to third parties about how to violate The Freecycle Network's Marks. Due to Mr. Oey's destructive and tortious actions, The Freecycle Network has suffered damages to its good reputation, its goodwill and is at a significant risk of losing its corporate sponsorship, which has already been reduced due to its loss of reputation and goodwill. Kobialka Decl., Exhs. 1-2.

The Freecycle Network's claims for damages and injunctive relief are against Mr. Oey and his wife as individuals for contributory trademark infringement and trademark disparagement, injurious falsehood, defamation, and intentional interference with a business relationship. Ms. Oey is equally subject to jurisdiction by virtue of her marriage to Mr. Oey. Pursuant to A.R.S. § 25-215(d) ("in an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first from the community property, and second, from the separate property of the spouse contracting the debt or obligation"); *see also Spudnuts, Inc. v. Lane*, 139 Ariz. 35, 36, 676 P. 2d 669, 670 (Ariz. Ct. App. 1984). A.R.S. § 25-215(d) provides that if a plaintiff wants to hold a marital community accountable for an obligation, both spouses

must be sued jointly”). A judgment against one spouse does not otherwise bind the community. Eng v. Stein, 123 Ariz. 343, 345-46, 559 P.2d 796, 798-99 (Ariz. 1979).¹

C. The Unrelated California Action

The California action involves different parties and different claims. The Freecycle Network has been sued by an unincorporated association, allegedly based in Sunnyvale, California (“the Sunnyvale group”). The Sunnyvale group is suing The Freecycle Network for intentional interference with its relationship with Yahoo! Groups and for a declaratory judgment that The Freecycle Network’s Marks are generic and that the Sunnyvale group does not infringe these Marks. The allegations in support of the Sunnyvale group’s claim against The Freecycle Network are that The Freecycle Network requested that the Sunnyvale group discontinue its improper use of its Marks. After the Sunnyvale group refused to do so, The Freecycle Network contacted Yahoo! regarding these trademark violations and requested the removal of the Sunnyvale group’s Yahoo! Group.

III. ARGUMENT

A. The Freecycle Network’s Choice of Forum Should Be Respected and Accorded Great Weight

The Freecycle Network’s choice of forum is accorded great weight, a point which Defendants concede in their own motion. Mot. To Stay or Transfer at 2; Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 503 (1947); Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987). In fact, according to the United States Supreme Court, a resident’s choice of forum is given a strong preference: “[i]n any balancing of conveniences, a real showing of convenience by a plaintiff who has sued in his home forum will normally outweigh the inconvenience the defendant may have shown.” Koster v. Lumbermens Mut. Cas. Co., 330 U.S. 518, 524 (1947). “[T]he reasons advanced for this frequently reiterated rule apply to only to residents of the forum state: (1) if the plaintiff is a

¹ In light of this law, references to jurisdiction against Mr. Oey justify jurisdiction against Mrs. Oey, as well.

resident of the jurisdiction in which the suit is filed, the plaintiff's choice of forum is presumed to be convenient (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 235-36 (1981)); and (2) a state has a strong interest in assuring its own residents an adequate forum for the redress of grievances." Stangvik v. Shiley, Inc., 54 Cal.3d 744, 754 (1991) (citations omitted)).

The Freecycle Network's choice of jurisdiction is presumed convenient because The Freecycle Network resides in Tucson. *Id.* (citations omitted). In fact, The Freecycle Network was founded in Tucson and is now headquartered in Tucson. Deron Beal, the founder of The Freecycle Network and one of the key fact witnesses who will testify at trial on behalf of The Freecycle Network, is a resident and located in Tucson. In fact, all of The Freecycle Network's board members are located in Tucson, Arizona. As such, the key witnesses are all located in Tucson. Beal Decl. ¶¶ 2-3.

Furthermore, all of The Freecycle Network's documentation relevant to this litigation is located in Tucson. Mr. Oey's statements are directed at the Tucson-based The Freecycle Network, and the resulting harm from Mr. Oey's conduct is occurring in Tucson. *See* Kobialka Decl., Exhs. 1-2. Mr. Oey reported back to The Freecycle's Network's Tucson office, the only office and headquarters for The Freecycle Network. Beal Decl. ¶¶ 2, 4-11. For these reasons, as well as the fact that Tucson is The Freecycle Network's home forum, there is no question that Tucson is convenient.

This Court also has a strong interest in assuring that its resident has an adequate forum for redress of its specific grievances against Mr. Oey. This is particularly true where he has subjected himself to jurisdiction in Arizona, as described herein. This is not a case of forum shopping because The Freecycle Network has brought a claim in its home state, a jurisdiction with a strong interest in assuring its own residents an adequate forum for the redress of grievances.

B. This Court Has Specific Personal Jurisdiction Over Mr. Oey

Contrary to Defendants' (mis)statement of the law, Defendants, not The Freecycle Network, bear the heavy burden of demonstrating the propriety of a transfer. *See* Lockman Found. v. Evangelical Alliance Mission, 930 F.2d 764, 767 (9th Cir. 1991); *see also* E. & J. Gallo Winery

v. F. & P. S.p.A., 899 F.Supp. 465, 466 (E.D. Cal. 1994); Defs.' Opp. at 3 ("the burden of establishing that the case should be transferred is The Freecycle Network's"). As described below, Defendants have failed to meet this burden.² Furthermore, Mr. Oey has purposefully availed himself of Tucson. Purposeful availment means that Mr. Oey "[has] performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state." Doe v. Unocal, Inc., 248 F.3d 915, 924 (9th Cir. 2001), quoting Sher v. Johnson, 911 F.2d 1357, 1362 (9th Cir.1990). As described below, Mr. Oey has affirmatively acted with respect to The Freecycle Network, such that he has purposefully availed himself of Tucson.

1. Mr. Oey Has Purposefully Availed Himself of Tucson

Personal jurisdiction is appropriate over Mr. Oey. The Ninth Circuit has established that the Court can claim personal jurisdiction over a non-resident defendant if he has established sufficient minimum contacts within the district. Unocal, 248 F.3d at 923; *see also* Hanson v. Denckla, 357 U.S. 235, 250-53 (1958). Mr. Oey has satisfied all three steps of the Ninth Circuit's three-part test to evaluate the nature and quality of a defendant's contacts with a particular forum. Unocal, 248 F.3d at 923, citing Gordy v. Daily News, L.P., 95 F.3d 829, 831-32 (9th Cir. 1996).³ As described below, Mr. Oey has acted and performed in such a manner that he has invoked the

² Defendants' opposition relies upon three cases which they claim support their argument that the case should be transferred to California. Sorenson v. DialmerChrysler AG, 2003 U.S. Dist. LEXIS 6294 (D. Cal. 2003); S.C. Johnson & Son, Inc. v. Gillette Co., 571 F. Supp. 1185 (N.D. Ill. 1983); and Saint-Gobain Calmar, Inc. v. Nat'l Products Corp., 230 F. Supp. 2d 655 (E.D. Pa. 2002). Unlike here, the plaintiffs in these cases filed suits in districts *outside* of their home forums, a selection which is automatically given less deference. Furthermore, the new venue sought by the defendants in these cases were the sole locations for documents, witnesses, and other evidentiary matters, which is not the case here. Finally, each of these cases involved solely patent infringement claims, unlike the present case.

³ The three part test involves consideration of the following:

(1) The nonresident defendant must engage in some act or consummate some transaction within the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;

(2) The claim must be one which arises out of or results from the defendant's forum-related activities; and

(3) Exercise of jurisdiction must be reasonable.

benefits and protections of the laws of this Court. Additionally, The Freecycle Network's claims arise out of and result from Mr. Oey's forum-related activities. Finally, exercise of jurisdiction is reasonable in light of Mr. Oey's activities in Tucson. *Id.*

Furthermore, considering the wide array of factors considered in this analysis, the overwhelming weight of these factors favor maintaining this case in Tucson, including the fact that the relevant policies at issue in this case were implemented in Tucson, Tucson is The Freecycle Network's choice of forum, Mr. Oey's substantive contacts with Tucson, Mr. Oey's statements made directed at the Tucson-based The Freecycle Network, among others. Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000).

As described in detail in the fact section, Mr. Oey was intimately involved in numerous strategic business decisions for The Freecycle Network on an *international* level. Indeed, his involvement with The Freecycle Network cannot be understated. He was:

- (1) the head of the New Website Planning Team,
- (2) the head of FreecycleNext, a group formed by The Freecycle Network for all local member moderators worldwide,
- (3) one of the few leaders of The Freecycle Modsquad, which was The Freecycle Network's main worldwide moderator group,
- (4) a very active member of The Freecycle Network's Penguin Patrol and
- (5) the individual largely responsible for the implementation, drafting and execution of The Freecycle Network's Trademark and Copyright Policy.

Beal Decl. ¶¶ 4-11; *see also* Kobialka Decl., Exhs. 1-2. Given these prominent roles in The Freecycle Network, Mr. Oey did more than allegedly "sit at his computer in California and send emails"; he was, in fact, an integral participant in the daily activities of The Freecycle Network.

As he was active in these various roles that he held at The Freecycle Network, Mr. Oey worked directly and closely with the founder of The Freecycle Network in his duties as one of the leaders of these various groups, such as the Modsquad, critical to the success, growth, development and strategic planning of The Freecycle Network. Beal Decl. ¶¶ 4-11. He was the head of very important projects critical to The Freecycle Network's mission and reported to The Freecycle Network's Tucson office, the only office and headquarters of The Freecycle Network. Thus, there is no question that Mr. Oey has acted and performed so closely with The Freecycle

Network such that he has voluntarily subjected himself to jurisdiction in Tucson. Unocal, 248 F.3d at 923.

2. The Claims Arise Out of Mr. Oey's Forum-Related Activities

This underlying dispute centers around Mr. Oey's decision to act in a manner completely contrary to his previous activities and the recommendations he himself made when he was involved with The Freecycle Network as a head of numerous strategic and planning committees vital to The Freecycle Network's existence. For example, claims in this case involve his instructions on how to violate The Freecycle Network's Trademark and Copyright Policy that he himself drafted and destroy the goodwill in The Freecycle Network's trademarks that he sought to protect. Beal Decl. ¶¶ 7-10, Exhs. 1-2; *see also* Kobialka Decl., Exhs. 1-2. Thus, as described above, there can be no question that The Freecycle Network's claims arise out of Mr. Oey's forum-related activities. Unocal, 248 F.3d at 923.

3. The Exercise of Jurisdiction Is Reasonable and Just

As described herein, Mr. Oey has purposefully availed himself of Tucson. Furthermore, this forum is convenient and is The Freecycle Network's home forum, making the exercise of jurisdiction is reasonable and just. Unocal, 248 F.3d at 923. Mr. Oey, on the other hand, has not demonstrated, and cannot attempt to do so on reply, a "strong showing of inconvenience to warrant upsetting plaintiff's choice of forum" and to obtain transfer. Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986).

In fact, there would significant hardship to The Freecycle Network if the case was to be transferred given this Court's familiarity with the details and facts of this case. Jacobson v. Hughes Aircraft Co., 105 F.3d 1288, 1302 (9th Cir. 1997) (the district court must consider the possible hardship to the plaintiff if the court grants the transfer and the deference to be accorded to the plaintiff's choice of forum). This Court has had before it extensive motion practice involving The Freecycle Network's Motion for TRO and Preliminary Injunction, and Motion for Order to Show Cause, which have included several oral arguments and an evidentiary hearing involving the

examination of Mr. Beal. As a result of this briefing, this Court has issued an Order on May 11, 2006, setting forth the allegations underlying the lawsuit.

A transfer would require The Freecycle Network to educate a different Court on the issues and claims unique and individual to this particular dispute, which have no bearing on the case in California which involves a different party and different causes of action. In contrast, maintaining the lawsuit in Tucson does not create any hardship on Defendants who have Tucson-based counsel who have been involved since the outset of this litigation. Accordingly, the hardship to The Freecycle Network far outweigh any benefit from transfer, as jurisdiction in Tucson is reasonable and just in this case.

C. Defendants Have Failed to Satisfy the Statutory Criteria of Section 1404(a) and The Jones Factors

Defendants have simply not met their heavy burden of demonstrating that transfer is appropriate, as described above. 28 U.S.C. 1404 (a) calls for transfer to a *more* convenient forum, not to a forum likely to prove equally convenient or inconvenient, and a transfer should not be granted if the effect is simply to shift the inconvenience to the party resisting the transfer. Van Dusen v. Barrack, 376 U.S. 612, 645-46 (1964). Additionally, Section 1404(a) calls for a change of venue if it proves more convenient for the witnesses of the case. Finally, §1404(a) calls for a change of venue if it serves the interest of justice.

Here, The Freecycle Network, its founder and all of its board members, as well as relevant documentation, are located in Tucson, making Tucson the most convenient forum. Beal Decl. ¶ 2. Furthermore, as described above, the issues in this case arise from actions taken by Mr. Oey against The Freecycle Network that have negatively impacted the operation of the organization in Arizona. Transfer to the district in which Mr. Oey resides only serves convenience for Mr. Oey, while placing significant hardship and inconvenience upon The Freecycle Network. Thus, Defendant's proposed alternative venue is not more convenient for the case overall. *Id.*

Furthermore, the California action does not involve Mr. Oey, as he is not a named party in the litigation and involves totally different claims, which are not dispositive of The Freecycle Network's claims against Mr. Oey for his individual tortious conduct. Thus, transfer would not

serve the interests of justice, as there is no duplicity of judicial efforts between the two cases. The two lawsuits involve separate and distinct opponents, facts, and issues. In the immediate case, The Freecycle Network has asserted causes of action for trademark disparagement, injurious falsehood, defamation, and intentional interference with business relations. In the California case, an unrelated party has asked for interference for facts specific to its situation, and a determination on its infringement of The Freecycle Network's trademarks, as well as declaration that The Freecycle Networks' trademarks are generic.

Whether Mr. Oey has committed defamation, trademark disparagement, injurious falsehood or intentional interference with business relations, has no effect on a totally different entity's claims in the California case. Thus, there is no risk of inconsistent rulings. Both courts are not, as Defendants broadly and inaccurately claim, deciding issues such as validity and infringement of The Freecycle Network's trademarks. Essentially, Defendants appear to believe that The Freecycle Network should be forced to compromise the integrity of its properly filed case in its home state simply because it has been sued in California by another party for separate causes of action. As such, changing venue in order to consolidate these cases is inappropriate and would neither serve judicial economy nor interest. For these reasons, Defendants' motion should be denied.

D. There Is No First Filed Case

The first to file rule "may be invoked when a complaint involving the same parties and issues has already been filed in another district." Alltrade, Inc. v. Uniweld Prods., Inc. 946 F.2d 622, 625 (9th Cir. 1991), quoting Pacesetter Sys., Inc. v. Medtronic, Inc., 678 F.2d 93, 95 (9th Cir. 1982). Of course, if the issues and parties were not the same, adherence to the first-to-file rule would be a reversible error for it would constitute a misapplication of the law. Alltrade, 946 F.2d at 628 n.13, citing Pacesetter, 678 F.2d at 96. "As for the respective convenience of the two courts, normally [this argument] should be addressed to the court in the first-filed action. Apprehension that the first court would fail to appropriately consider the convenience of the parties and the witnesses should not be a matter for our consideration." Alltrade, 946 F.2d at 628.

As stated earlier, there are obvious differences between the parties and issues involved in the California action and this action. Defendants have attempted in their motion to portray the Sunnyvale group and Tim Oey as one inseparable and cohesive unit, which is grossly misleading. In reality, Mr. Oey appears merely to be a member of the plaintiff in the California action. This tenuous connection does not transform the California action into a first filed case. That Defendants are attempting to portray the two parties as one for the sake of using the first to file rule is inappropriate.

Secondly, as much as Defendants would like to broadly construe the issues in California action and this action such that they sound the same, a closer examination of the allegations made and facts asserted in each Complaint show the cases fundamentally differ in substance. In fact, contrary to Defendants' assertion, a declaration of non-infringement in the California action would not resolve the claims against Tim Oey for inducement, defamation, injurious falsehood, and intentional interference with business relations, as these claims are based on different facts. For example, this Court could still determine that Mr. Oey's conduct in making statements has constituted interference, injurious falsehood and defamation, notwithstanding the attack on The Freecycle Network's trademarks. Consequently, Defendants' motion should be denied.

E. This Case Is Properly Brought in Tucson and Should Not Be Stayed

As mentioned in the above discussion, a careful comparison of the California action to this case reveals separate and distinct parties and issues. Though Defendants use overarching language in their motion to portray these crucial aspects as being the same across both cases, in reality the differences between the two actions are clear and obvious. No judicial economy will be preserved by transferring the instant case to California or by staying the instant case pending a judgment in California. In the interest of justice, the immediate case should be allowed to proceed without reliance upon or influence from the California case. For the reasons described above, including the fact that the California case is unrelated to the present action, this case should not be stayed.

Furthermore, there is nothing more insulting than the allegation that there has been "judge shopping." Defs.' Mot. at 10. The Freecycle Network properly brought this case in Tucson, its

home forum. In what only can be described as a desperate attempt at revisionist history, Defendants repeatedly state that The Freecycle Network “treats FreecycleSunnyvale and Tim Oey as the same party.” Defs.’ Mot. at 9. To this end, Mr. Oey suggests that the Sunnyvale group inappropriately failed to serve counsel for FreecycleSunnyvale, the law firm of Mayer, Brown, Rowe & Maw (“Mayer Brown”) with the original complaint in this action, and then inappropriately contacted Mayer Brown in regard to Mr. Oey’s failure to comply with the TRO granted by this Court.

Defendants’ assertions are disingenuous, at best. Indeed, The Freecycle Network did *not* serve Mayer Brown with the original complaint in this action, as Mayer Brown, at that time, represented only the Sunnyvale group. The Freecycle Network at the time did not know Mr. Oey’s status with the plaintiff in the California action, and did not know whether Mayer Brown was representing Mr. Oey as an individual for claims that involved his personal liability. During the hearing on The Freecycle Network’s *Ex Parte* Motion for Temporary Restraining Order before this Court, however, Mayer Brown appeared telephonically on behalf of Mr. Oey as an individual. Indeed, the Court’s minutes from this hearing indicate the same. Kobialka Decl., ¶ 4, Exh. 3. At no time did Mayer Brown inform The Freecycle Network that it was *not* representing Mr. Oey until receipt of a letter from Mr. Dennis Corgill of Mayer Brown of May 1, 2006, stating that Mayer Brown was no longer representing Mr. Oey as an individual. Thus, The Freecycle Network had no way of knowing that at that time, Mr. Oey was only represented by his Arizona counsel. *Id.*, ¶ 5, Exh. 4. Accordingly, The Freecycle Network’s letter, sent prior to May 1 2006, regarding Mr. Oey’s failure to abide by the terms of the TRO in this action was appropriately directed to Mr. Oey’s counsel of record, Mayer Brown.

Indeed, The Freecycle Network has consistently treated Mr. Oey, the individual, as a separate party from the Sunnyvale group. To the contrary, it is Mr. Oey who is attempting to tie his personal liability (based on his personal conduct) with the Sunnyvale group. Moreover, Mr. Oey, the individual, has never brought any sort of claim against The Freecycle Network. Thus, he

simply has no basis for a “first to file” argument and his request to stay or transfer this action on this basis should be denied.

IV. CONCLUSION

For the foregoing reasons, The Freecycle Network respectfully requests this Court to deny Defendants’ Motion to Transfer or Stay.

DATED: May 18, 2006

PERKINS COIE LLP

By /s/ Lisa Kobialka
Lisa Kobialka

Attorney for Plaintiff
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THE FREECYCLE NETWORK, INC.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

THE FREECYCLE NETWORK, INC.,
an Arizona non-profit organization,

Plaintiff,

v.

TIM OEY and JANE DOE OEY,

Defendants.

CASE NO. CV 06-173 RCC

**DECLARATION OF LISA KOBIALKA
IN SUPPORT OF THE FREECYCLE
NETWORK, INC.'S OPPOSITION TO
DEFENDANTS' MOTION TO STAY
OR TRANSFER**

Date: June 16, 2006

Time: 11 a.m.

Judge: Hon. Raner C. Collins

Location: Tucson Courtroom 5B

I, LISA KOBIALKA, declare as follows:

1. I am an attorney with the law firm of Perkins Coie LLP, counsel of record for Plaintiff The Freecycle Network, Inc. ("The Freecycle Network"). I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Declaration of Deron Beal in Support of The Freecycle Network, Inc.'s *Ex Parte* Motion for Temporary Restraining Order and Motion For Preliminary Injunction, filed April 9, 2006.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of Deron Beal in Support of the Freecycle Network Inc.'s Reply to Defendant's Opposition to Motion for Preliminary Injunction, filed May 8, 2006.

4. At the April 24, 2006, hearing on The Freecycle Network's *Ex Parte* Motion for Temporary Restraining Order, Ian Feinberg and Dennis Corgill of Mayer Brown Rowe & Maw ("Mayer Brown") appeared telephonically on behalf of Mr. Oey as an individual. During this hearing, at no time did Mayer Brown inform The Freecycle Network or the Court that it was not representing Mr. Oey as an individual. Mayer Brown's appearance at the April 24, 2006, hearing is reflected in the Court's minutes from the hearing. Attached hereto as Exhibit 3 is a true and correct copy of the Court's Civil Minutes from the April 24, 2006 hearing.

5. On May 1, 2006, Mr. Corgill sent a letter indicating that Mayer Brown was no longer representing Mr. Oey as an individual. Attached hereto as Exhibit 4 is a true and correct copy of Mr. Corgill's letter of May 1, 2006.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed this 18th day of May 2006 in Menlo Park, California.

/s/
Lisa Kobialka

EXHIBIT 1

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THE FREECYCLE NETWORK, INC.,
an Arizona non-profit organization,

Plaintiff,

v.

TIM OEY,
an individual

Defendant.

CASE NO. 06-CV-00173-RCC

DECLARATION OF DERON BEAL IN
SUPPORT OF THE FREECYCLE
NETWORK, INC.'S *EX PARTE* MOTION
FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR
PRELIMINARY INJUNCTION

Date: April 24, 2006
Time: 2:00 p.m.
Before: Honorable Raner C. Collins
Location: Courtroom 5B

BEAL DECLARATION IN SUPPORT OF
EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER &
MOTION FOR PRELIMINARY INJUNCTION

{BY: 06/20/05}

1 I, Deron Beal, declare as follows:

2 1. I am the founder, Executive Director and Board Chair of The Freecycle Network,
3 Inc. ("The Freecycle Network"). I make this declaration in support of The Freecycle Network's
4 *Ex Parte* Motion for Temporary Restraining Order and Motion for Preliminary Injunction. I
5 have personal knowledge of the facts stated and if called to testify as a witness, would
6 competently testify thereto.

7 2. The Freecycle Network, Inc. is a nonprofit corporation incorporated under the
8 laws of the State of Arizona. The Freecycle Network encourages and helps to coordinate the
9 efforts of member groups throughout the world to reuse, recycle, and gift goods. The
10 organization was started in Tucson, Arizona, with a single recycling center. Today, The
11 Freecycle Network is a worldwide organization, with thousands of local recycling groups and
12 more than an estimated two million individual members. Publications such as CNN.com, The
13 Motley Fool, CBS News, and The Washington Post have heavily praised The Freecycle Network
14 and its promotion of the reusing, recycling, and gifting of goods. True and correct copies of
15 news articles from CNN.com, The Motley Fool, CBS News, and The Washington Post,
16 respectively, are attached hereto as Exhibits A-D.

17 3. The Freecycle Network maintains its own Web site to assist members in their
18 efforts to recycle, reuse, and gift goods. The Web site is located at the URL www.freecycle.org.
19 The site also maintains a directory of all member groups, which lists the individual group links
20 and provides resources for volunteers to create new local recycling groups.

21 4. The Freecycle Network has received corporate sponsorship since February 2005
22 to enable it to cover its administrative costs and continue promoting the reusing, recycling, and
23 gifting of goods.

24 5. The Freecycle Network has been using the trademarks FREECYCLE, THE
25 FREECYCLE NETWORK, and the distinctive "The Freecycle Network" logo (collectively "The
26 Freecycle Network's Marks" or the "Marks") continuously since at least May 1, 2003. The
27 Freecycle Network has strict guidelines as to the use of the Marks, and expends much effort in
28

1 policing potential infringement of the Marks. A true and correct copy of The Freecycle
2 Network's Trademark and Copyright Policy, as of March 15, 2005, is attached hereto as Exhibit
3 E. A true and correct copy of The Freecycle Network's guidelines for appropriate use of its
4 Marks, as of April 3, 2006, is attached hereto as Exhibit F.

5 6. The Freecycle Network is currently registering these marks with the United States
6 Patent and Trademark Office ("PTO"). The Freecycle Network's FREECYCLE trademark and
7 distinctive logo were approved for publication on the Principal Register on November 22, 2005.
8 A notice of publication was issued on December 28, 2005. Subsequently, an opposition was
9 filed with the Trademark Trial and Appeal Board ("TTAB") on January 18, 2006, challenging
10 the registration of these marks. A true and correct copy of a current status report from the PTO
11 for The Freecycle Network's trademark application is hereto attached as Exhibit G. A true and
12 correct copy of the opposition filed with the TTAB is attached as Exhibit H.

13 7. The Freecycle Network gives member groups permission to use the Marks in
14 order to help facilitate the goals of recycling, reusing, and gifting of goods. The Marks are used
15 to identify local groups who wish to promote the recycling, reusing, and gifting of goods to the
16 public, and also to identify local recycling organizations which participate within The Freecycle
17 Network. The Freecycle Network itself uses the Marks to help promote the goals of The
18 Freecycle Network, including promotion of recycling of usable items within a community.
19 Individual recyclers rely on the Marks to know that they are dealing with a local organization
20 affiliated with The Freecycle Network.

21 8. Defendant Tim Oey ("Defendant" or "Oey") was an active member of The
22 Freecycle Network from early 2004 until late 2005, during which time he held various positions
23 within The Freecycle Network. Defendant was a member of a group tasked with developing
24 guidelines for the protection of The Freecycle Network's intellectual property, including
25 copyright and trademark protection. Defendant, in fact, personally helped develop these
26 guidelines, and published these guidelines to the member groups. Defendant frequently and
27
28

1 vigorously defended and attempted to protect the Marks in public e-mail exchanges and various
2 Internet fora.

3 9. Due to behavior contrary to the goals of The Freecycle Network, Defendant was
4 asked to step down from his position at The Freecycle Network on September 15, 2005.
5 Subsequently, Defendant made false statements regarding The Freecycle Network and the
6 Marks, and began to publicly encourage the destruction of The Freecycle Network's Marks. In
7 particular, Defendant made statements calling into question the ownership and validity of the
8 Marks. Defendant continues making such statements despite having been asked to refrain from
9 such conduct.

10 10. Waste Management has reduced its corporate sponsorship of The Freecycle
11 Network from \$120,000 in the previous year to \$100,000 for the year beginning in February
12 2006 and ending in January 2007. Additionally, Defendant's statements have adversely affected
13 the hard-earned reputation and goodwill of The Freecycle Network.

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct. Executed in Tucson, Arizona on April 19th 2006.

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17 By:  _____
18 Deron Beal
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The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona
06-CV-173-TUC-RCC

Index of Exhibits to Beal Declaration

Exhibit A	Website Finds New Homes for Old Junk
Exhibit B	Things You Can Get for Free!
Exhibit C	How to Choose Healthy Gifts
Exhibit D	Shrink Your Ecological Footprint
Exhibit E	Freecycle Trademark and Copyright Policy
Exhibit F	How to Use the Freecycle Trademark Properly
Exhibit G	Results from the TARR Web Server
Exhibit H	Notice of Opposition

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona
06-CV-173-TUC-RCC
Exhibit A to Beal Declaration



Powered by Clickability

Web site finds new homes for old junk

FRANKFURT, Germany (CNN) -- EBay may be king when it comes to online trading, but another Web site, which has an environmentally friendly ethos, is also making a big impact on the business of auctioning in cyberspace.

Freecycle.org is popular with a new breed of tech-savvy greens who are putting their unwanted goods up for bid on the Web, instead of throwing them in the trash.

What makes Freecycle unique, though, is that everything up for grabs on the site is free.

If, for example, you have a bike you want to give away, you would post it on your local Freecycle Web site and wait for the e-mails to come in.

And because no money changes hands, you get to decide who the bike goes to -- and users say that the best part is meeting the person when they come to pick up the item.

The site has 1.6 million members from more than over 50 countries -- and environmentally friendly Germany is leading the way.

Publishing expert Thomas Pradel is one of the people behind Freecycle's rapid organic growth.

"I started the Frankfurt Freecycle group one-and-a-half years ago and now there's 700 members and it's still growing," Pradel told CNN.

Laura Thurston, a project manager who runs the Darmstadt site, also in Germany, told CNN running such a worthy cause was very rewarding.

"It makes me feel good about trying to save the environment, save the planet and also I don't want my life full of clutter," she said.

Freecycle is currently listed on the Yahoo groups network.

But its Arizona-based founder is trying to give Freecycle a more permanent virtual home -- a move that will require capital and the introduction of advertising.

Environmental lobby group Friends of the Earth do not see this as a problem.

"It's a good solution to the end part of the problem which is the waste of useful goods, and in that way it will stop those goods going to landfill or incineration," Georgina Bloomfield, of Friends of the Earth, told CNN.

"The environmental benefit of using that shouldn't be overshadowed by the fact that they may need to take advertising as well."

-- CNN's Jim Boulden contributed to this report.

CNN.com - Web site finds new homes for old junk - Oct 17, 2005

Page 2 of 2

Find this article at:

<http://www.cnn.com/2005/TECH/10/17/spark.freecycle/index.html>

☐ Check the box to include the list of links referenced in the article

<http://cnn.worldnews.printthis.clickability.com/pt/cpt?action=cpt&title=CNN.com+-+Web...> 4/11/2006

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona
06-CV-173-TUC-RCC
Exhibit B to Beal Declaration



The Motley Fool.
Fool.co.uk

[Previous Page](#)

Things You Can Get For Free!

<http://www.fool.co.uk/news/foolseyeview/2005/fev051124c.htm>

By Alison Hunt (TMFAlly)
11/24/2005

If you thought that nothing in life is free, then I'm here to prove you wrong. Below is just a few of the ways we can get services, entertainment, software, even cold hard cash, absolutely free! So if you'd like to save a few bob check them out:

Free Phone Calls (worth £10+ per month)

How much money do you spend phoning your friends and family, each month? How would you like to reduce it to next to nothing? Well, if like many you have a broadband connection at home, it's easy. Sign up to Skype, plug in a simple headset with microphone into your PC and you can call any of your friends who do the same, absolutely free! What's more, get friends and relatives who live abroad to sign up and you can call them for free, too.

Free cash (worth £50+)

If you'd find some actual cold, hard cash useful, and you're not getting great value out of your bank account, consider switching. You'll get £75 if you switch to Citibank, £50 if you move to First Direct or Lloyds TSB and if you can find a friend with an Alliance & Leicester account to recommend you, you'll both get £50!

You can switch to First Direct and Citibank in our [Banking Centre](#).

Free Cinema Tickets (worth £7-8 each)

If you're a member of the Nectar scheme, don't use those points to get money off your shopping bill. Whereas 2,000 points (four vouchers) would save you a tenner in-store, use those same vouchers in an Odeon cinema and you'd get two free cinema tickets, which could be worth over £15, instead. Use 4,000 points and you can get two tickets for one of the West End cinemas.

Alternatively, if you (or a friend) have a mobile phone on the Orange network, take advantage of the Orange Wednesday promotion - meaning you can pay for one ticket on a Wednesday, and get another absolutely free!

Free Virus protection (worth £40 annually)

Protecting your home computer against viruses is extremely important, especially if you use Internet banking - some banks will even expect you to have it. And virus protection from Norton or McAfee typically costs around £40 per year. However, there is some very good, anti-virus protection software available, for absolutely nothing! Check out AVG and avast for excellent, free anti-virus protection.

Free Bottles of Wine (worth £60+)

<http://www.fool.co.uk/Server/printarticle.aspx?file=/news/foolseyeview/2005/fev051124c...> 4/11/2006

Switch bank to Smile's current account before 10 December and, once you've credited the account with at least £1,500, as well as benefiting from excellent customer service and an interest rate of 3.3%AER, you'll also be given a free case of twelve bottles of wine!

You can switch to Smile in our Banking Centre.

Free just about anything! (worth £1+)

Ever been concerned with the amount of stuff you take to the rubbish tip that still has some life in it? Ever had to buy something that you know other people simply store in their garage but no longer use? Then check out [Freecycle](#). This worldwide network allows anyone with any useful items they no longer need but hate to simply throw away to give it to someone who could use it. So you can pick up virtually anything, for free.

This fantastic method of recycling has really taken off to the point that wherever you live, you're likely to find yourself close to a Freecycle community. Items listed by my local Freecycle group today include furniture, baby gear, toys and even a wireless router!

More free cash (worth £50+ depending on spend)

If earning money while you spend appeals, a [cashback credit card](#) will be right up your street. By earning a percentage of every pound you spend on your card you can quickly accrue some serious cashback especially if you put all of your spending, no matter how trivial, on the card. Spending £500 a month on the American Express Blue card, for example, could earn you over £70 cashback in the first year.

You can find a number of cashback credit cards, including the American Express Blue card in our [Credit Card Centre](#).

Free DVD rental (worth £7+)

Fancy watching the latest blockbusters released on DVD, for free? Then sign up to one of the many DVD rental services and get films delivered, to your door (you simply pop them in the post box to return). They each offer a free trial, which; if you don't wish to continue after this time you can simply cancel. Check out [Screenselect](#), [LoveFilm](#), [Tesco](#) (powered by VideoIsland), [Blockbuster](#) and [Amazon](#) (subscribers get 10% off any DVD purchases made) to name but a few. And don't forget, you can rent a DVD at Blockbuster for just 500 Nectar points (one voucher).

Free Firewall (worth £40+ annually)

If you're a broadband user, along with virus protection you'll need a good firewall. But don't worry; you don't have to spend a fortune buying an off-the-shelf package. Download a free version from ZoneAlarm or Sygate and protect your PC against hackers, for nothing.

Free electrical items, flights, days out etc. (worth £30+ annually, depending on your spending)

If you grocery shop in Sainsbury's, buy your petrol at BP and your clothes at Debenhams you probably already have a [Nectar](#) card. The question is - do you realise all the different ways in which you can use the vouchers? Cinema tickets and DVD rental have already been mentioned, but you can also save up your points for free electrical items, pampering gifts, champagne balloon trips, flights and days out to name but a few.

And don't forget, you can earn points when you make any online purchases at any of the new Nectar

e-Stores including Amazon, Play, B&Q, The Apple Store, PC World, Curry's, Game, Heals and The White Company.

Free Airmiles, days out, meals in restaurants etc. (worth £30+ annually, depending on spend)

And for those that shop at Tesco, there is a wealth of ways to use those Clubcard points. Generally speaking, you'll get better value if you convert your vouchers into Deals (each £2.50 becomes £10). Exchange your Deals tokens for free entry to Hampton Court Palace, The Tower of London, Longleat Safari Park or Whipsnade Wild Animal Park amongst others.

Alternatively, use them for a free meal at Haha Bar and Canteen, Café Rouge or Bella Italia. And £8-10 in Clubcard vouchers will buy one year's subscription to Cosmopolitan, Good Housekeeping or Men's Health magazine. And if you're an Airmiles collector, each £2.50 voucher is worth 60 Airmiles with each additional 50p worth another 12 miles.

Free Borrowing (worth £100+ depending on debt)

If you currently pay interest on a credit card, don't forget that by switching to a 0% card for balance transfers you can save yourself some serious interest and effectively borrow for free. Why not bag a better card today?

We have a number of 0% cards in our Credit Card Centre.

Free Anti-Spyware programs (worth £40+ annually)

Protect your home PC from fraudsters by downloading one of the free, anti-spyware programs available. Check out Ad-Aware and Spyware Blaster 3.4 for their free downloads.

Free Aerial view of your home

If you've got broadband and fancy viewing your home from space, check out this fantastic program from Google. By downloading the free version of Google Earth you can zoom in on anywhere in the world, from space, including your own home and even see 3D images and terrain!

Free Financial Advice (worth hundreds, if not thousands of pounds!)

And last but not least, save yourself a fortune in financial adviser fees by getting free information regarding personal finance and investing from the UK's best financial website, the Motley Fool!

So there you have it, fifteen ways to get something for free. What's more, if you took advantage of all of these suggestions you could save at least £500 each year not bad, eh!

> Better Banking & Cheaper Cards!

The Freecycle Network, Inc. v. Tim Oey
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District of Arizona
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[BACK](#) [PRINT](#)

How To Choose Healthy Gifts

Dec. 9, 2005

(WebMD) Who needs messy turtledoves and partridges when you can give the gift of better health to the adults and kids on your list – without breaking the bank?

WebMD turned to experts to get 12 suggestions for healthy holiday gifts

1. Jump rope. "When you think about muscles," Cedric X. Bryant, PhD, tells WebMD, "you realize they don't have little brains inside to know whether you are using a \$2,000 piece of equipment or a \$15 jump rope." Bryant is chief exercise physiologist for the American Council on Exercise (ACE). ACE recommends a jump rope for kids and fit adults. A 30-minute session at moderate speed can melt 250 calories off of a 130-pound person. For kids, jump ropes are great – revive a forgotten art! But Rita Beckford, MD, tells WebMD that jumping rope is not for the seriously overweight because it is a high-impact exercise. Beckford is a family practitioner and director of the Twinsburg Urgent Care Center in Cleveland.

2. Heart rate monitor. You can find these for around \$50, although some are higher. "These are great for people who have just started exercising regularly," Beckford says. "Getting up to 70% or 80% of your maximum heart rate is excellent for fat burning."

3. Pedometer. These can make you mindful of how much you are moving, Beckford says. She has upped the old conventional wisdom of a goal of 5,000 steps a day to 10,000, a challenge for the new year.

4. Body bands. Color coded by the resistance they provide, body bands are great stocking stuffers, but you might want to include a good instruction book or video, Beckford says. Unlike weights, these don't have the potential to drop on your toe or smack you in the face, but they must be used correctly. They are also great for seniors, she says.

5. Stationary frame for your road bike. "You can get one for around \$50," Bryant says. "This makes your bike into an exercise bike."

6. Exercise tapes or videos. Beckford created an exercise video, *At Home with Dr. B*, out of necessity. She was trying to shed 90 pregnancy pounds and was working out after hours in her urgent-care center. Soon her staff, then patients, then patients with their children, asked to join her. She then was asked to bring her workout to other centers and had to create the video to spread the popular program. If your recipient gets bored with certain tapes or videos, research good "walking" music that can be loaded on iPods. Bryant says a portable CD player, way under \$50, can also do the trick.

7. Starter lesson in karate, swimming, boxing, or Pilates. A Pilates mat is also a good present under this budget.

For Kids and Sports-Minded Adults

8. Assorted balls. With kids packing on the pounds, the holidays are a nice time to think about exercising as a family. Audrey Cross, PhD, a professor at the School of Public Health at Columbia University, says soccer is fun for adults and kids. "It develops good eye-foot coordination," she jokes. A volleyball and net, badminton set, or a basketball are also under \$50. What house should be without a ball? If a portable basketball hoop is too expensive, see if there is a giveaway list in your area. Go to Freecycle.org and sign up to offer and pick up items for free.

9. Double-sided countertop grill. Those little grills are helping everyone eat meat and veggies prepared in a healthier manner, according to Beckford. "They are so simple to use," JoAnna M. Lund, author of the health exchange cookbook series *and Cooking Healthy with the Kids in Mind*, agrees. She tells WebMD that kids can grill with these if properly supervised.

10. Apron for each child. Lund loves to cook with her eight grandchildren. "They all have an apron and put it on first thing when they visit and we make something," she says. "I am not stirring up food, I am stirring up memories they will always have."

11. Blender or juicer. "You can 'cook' great treats using a blender," Lund says. For kids, this is a painless way to get servings of fruit and milk. Children also like to use a salad spinner, another great gift, and will appreciate implements with chunkier, easier-to-hold handles than the sharp wire-handled carrot peeler found in every kitchen.

12. Healthy foods themselves. A gourmet basket of fruit, an assortment of nuts, bottles of almond or olive oil or balsamic vinegar, are all great gifts, Cross suggests. A plastic chopping board that washes free of meat juices is also a thoughtful present.

"Anything," Cross laughs. "but a deep-fat fryer. That would be an awful present!"

CBSNews.com: Print This Story

Page 2 of 2

Happy holidays. all -- and good eating and playing!

By Star Lawrence

Reviewed by Louise Chang, MD

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washingtonpost.com

Shrink Your Ecological Footprint

By Bridget Bentz Sizer
Special to The Washington Post
Sunday, March 12, 2006; M05

Everybody knows how big his actual footprint is, but until a friend sent me the link to <http://www.ecofoot.org/>, I was blissfully ignorant of the size of my ecological footprint. The Web site, created by the Earth Day Network, surveys users' eating, transportation and housing choices and spits out an estimate of how many planets would be needed to sustain the world if everyone on Earth lived the same lifestyle. The bad news? If everyone in the world lived like me, we would need three planets to sustain us. Even worse, the average American lifestyle would require 5.3 planets.

But it's not all doom and gloom. While downsizing an actual footprint requires amputation, an ecological footprint is much easier to modify. "We all have the power to make changes happen . . . when each of us do it, collectively we have a significant impact on the environment," says Monique Tilford, acting executive director of the Center for the New American Dream, a Takoma Park-based environmental advocacy group. Here are eight ways to start acting locally for a global impact.

JOIN FREECYCLED

Heidi Ridgley, a senior editor for the environmental nonprofit Defenders of Wildlife, wasn't sure what to do with her eco-friendly bug killer after she moved from a roach-infested apartment in Adams Morgan to a pest-free rowhouse in Columbia Heights. So she offered it up on the Freecycle Network. "People crawled out of the woodwork to [claim] it," she jokes.

Started in Tucson in 2003, the Freecycle Network is an international collection of free listservs aimed at reducing landfill waste by making one person's trash another person's treasure.

"I discovered Freecycle while redoing my front porch last summer," Ridgley says. "I had perfectly reusable deck wood that I didn't need anymore, and a neighbor told me Freecycle would ensure it wouldn't get sent to a landfill." With more than 9,300 local members, FreecycleDC (<http://groups.yahoo.com/group/FreecycleDC>) is a bustle of activity, with members posting regularly to offer unwanted goods. The only hard and fast rule is that all items must be offered for free. In addition to the deck wood and the bug killer, Ridgley has found homes for an unwanted child's scooter, a salad spinner, aquarium dechlorination drops and a thermostat.

GET RID OF JUNK MAIL

The average American receives 41 pounds of junk mail a year, according to the Center for the Development of Recycling. And 44 percent of that winds up in a landfill unopened (for me, the rest clutters up the kitchen table). Though the tide of junk mail may seem overwhelming, Tilford says that it's possible to shut it off. "Companies are required by law to take you off a mailing list if you request

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that," she says. A good place to start is by contacting the Direct Marketing Association to request your name be placed on a "do-not-mail" file. (This request can be made for free via postcard, or for \$5 on DMA's Web site, <http://www.dmaconsumers.org/cgi/offmailinglist>.) To curb the flow of pre-approved credit card applications, call TransUnion at 888-567-8688.

BE GREEN WHEN YOU CLEAN

Labels on typical household cleaners can be a bit troubling -- with warnings of "irreversible eye damage" and "skin burns." Being clean can sound, well, a little dirty. But fear not. Mindy Pennybacker, the editor of the Green Guide, an environmental and health newsletter, says most of her readers report finding "alternative cleaning products that work just as well as conventional cleaners." In other words, being green and being clean can go hand in hand. To find eco-friendly cleaners, the Green Guide (<http://www.thegreenguide.com/>) recommends reading labels carefully with an eye for specific claims. "Biodegradable in three to five days" is preferable to simply "biodegradable," since most substances will eventually break down, given the right conditions. Also, cleaners that promise "no solvents," "no phosphates" or are "plant-based" offer a better green guarantee than those with a vague "ecologically friendly" stamp on the label.

CHANGE YOUR LIGHT BULBS

Question: How many years does it take an environmentalist to change a light bulb? Answer: Seven, but only if he's using energy-efficient compact fluorescent light (CFL) bulbs. Though slightly more expensive, low-mercury CFL bulbs use less energy and last longer than standard light bulbs. Replace four standard bulbs with the CFL ones, and you'll prevent the emission of 5,000 pounds of carbon dioxide over the life of the bulbs, according to the Center for the New American Dream. The center, which has a "Turn the Tide" campaign (<http://www.newdream.org/ttooffline/actions.php>), also estimates that you'll save \$100 on your energy bill over the same time period. Though consumers complained of the harsh quality of early CFL bulbs, more recent models have softened the light. A 25-watt CFL bulb emits the same amount of light as a standard 100-watt bulb. And these days, CFL bulbs are sold almost everywhere standard light bulbs are sold.

PARK YOUR CAR

When Mimi Ikle-Khalsa's car was stolen last year, the insurance settlement would have paid for a replacement. Instead, Ikle-Khalsa, a massage therapist from Takoma Park, reflected on her use of fossil fuels and decided to go without. She relies on a combination of foot-power and public transportation to get to work in Silver Spring and Bethesda. Aside from the occasional "horrific rain" that crops up during her 1 1/2 -mile trek to the Metro, Ikle-Khalsa has no complaints.

While ditching the car entirely might not be practical for everyone -- according to a 2002 survey by the U.S. Department of Transportation, the average American drives 203 miles each week -- cutting back on needless car trips will shrink your global footprint; each person who eliminates 20 miles of extra driving a week also eliminates nearly 1,000 pounds of greenhouse gas emissions each year, according to the Center for the New American Dream. "Try consolidating shopping trips, so you're not just darting out and buying things," says Pennybacker. "All of these combined efforts can make a difference."

BYO BAG

Comedienne Lily Tomlin tells a story about buying a wastebasket: "The cashier put it in a bag. I brought it home. I took it out of the bag. I crumpled up the bag and tossed it in the wastebasket." The joke works

because of its absurdity -- Tomlin generates trash even as she buys a receptacle for the trash -- but also because it taps into a larger truth; each year Americans use an estimated 100 billion plastic shopping bags. Reusablebags.com, a Web site dedicated to reducing the use of disposable shopping bags, estimates that most plastic shopping bags wind up in landfills, where they take 1,000 years to decompose. So next time you're at the grocery store, consider bagging your goods in reusable canvas bags instead of paper or plastic. If you currently bring home 10 grocery bags each week that's a saving of 520 plastic bags each year.

RECYCLE YOUR CELL PHONE

Arsenic, mercury and lead are the kinds of toxins that lead to emergency phone calls to the poison control hotline, but did you know that they might also be in your old cell phone? The EPA estimates that 700 million cell phones containing 250,000 tons of toxic waste already have been discarded in American landfills. Next time you get a new cell phone, try donating your old one instead of tossing it. The National Zoo has partnered with Eco-Cell, a nonprofit based in Louisville, Ken., to collect visitors' unwanted cell phones, batteries and accessories. Eco-Cell will donate up to \$15 to the Friends of the National Zoo for every working cell phone collected -- working phones will be refurbished and passed on to low-income people, while "dead" phones will be recycled according to EPA guidelines. Not planning a trip to the zoo? Call Eco-Cell at 888-326-3357 or visit their Web site (<http://www.eco-cell.org/>) to learn how to donate a phone.

SKIP THE SCREENSAVER

Contrary to what the name might have you believe, the flying-window screensaver that pops up on your computer monitor when it's not in use is more of an energy waster than a saver. A computer monitor in screensaver mode uses almost as much energy as an active monitor. So ditch the screensaver and instead set your computer to "sleep mode" so that the screen goes blank when not in use. Better yet, turn off your monitor. Smith University estimates that 30 monitors set to sleep mode represent a reduction in emissions and energy consumption equal to taking one car off the road.

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Freecycle™ Trademark and Copyright Policy
Updated on 3-15-05

How to Use the Freecycle Trademark:

We are doing a really good thing here. But, we're also learning as we go, which means there will always be evolution and change. Because the Freecycle concept is unique and amazingly successful, there are many who have and who would try to use it for personal gain and profit. For that reason, The Freecycle Network is incorporated as a non-profit organization, and the Freecycle name and logo are trademark protected. We need to do our best to properly use the Freecycle trademark so that we don't lose the right to use it.

In legalese, the use of the term "Freecycle" denotes a gifting service which is officially approved by the nonprofit organization "The Freecycle Network," and one that the public can expect to adhere to certain standards. The Freecycle Network must approve any email list or web site that uses the term "Freecycle" in its name and provides any sort of exchange service. (and a relevant point for us to note internally is that we have to demonstrate a "concerted" effort.)

When using the term "Freecycle," please do the following:

- 1) While "The Freecycle Network" is a trade name, it also functions as a service mark -- i.e., a source indicator-- so it is ok to use a TM with it.

For example: The Freecycle Network™

When used as a trade name (think proper name), the term "Freecycle" may be used in place of "The Freecycle Network" to allow sentences to be more concise.

For example:

- ♦ While The Freecycle Network has been growing by leaps and bounds, Freecycle still remains true to its core mission.

- 2) In all other cases, the term "Freecycle" must be used as an adjective, never as a noun or verb.

For example:

- ♦ Do not say "I'm a freecycler." Do say "I'm a Freecycle member."
- ♦ Do not say "Keep on freecycling!" Do say "Keep on recycling, my Freecycle friends!"
- ♦ Do not say "Freecycling group." Do say "Freecycle group"
- ♦ Do not say "Please Freecycle." Do say "Please join a Freecycle group."
- ♦ Do not say "There are 10 freecycles in this state." Do say "There are 10 Freecycle groups in this state."
- ♦ Do not say "freecycle's membership." Do say "The Freecycle Network's membership."

- 3) **Attribution Statement.** (fancy-speak for a statement attributing ownership of a trademark to someone at the bottom of e-mails, etc.) **At the bottom or within the body of all official Freecycle web sites, articles, press releases, group home pages, and email list footers** (a Yahoo function which automatically places the text in the footer of every e-mail posted to that Yahoo list/group), **the following trademark attribution should be posted:**

Copyright © 2004-2005 The Freecycle Network (<http://www.freecycle.org>). All rights reserved.
Freecycle and the Freecycle logo are trademarks of The Freecycle Network in the United States and/or other countries

(In email list footers it is helpful to include the lines as well to set this apart.)

To create a footer in your Yahoo group:

- a. Log into the Yahoo and go to the group page
- b. Click on Management at the left
- c. Click on Messages at the right
- d. Next to Subject Tag and Footer, click Edit
- e. Enter the text above in the Footer box (you can create the lines by using a series of dashes (-) or underscores (_) but don't let them extend too far or they'll wrap to the next line in some email programs)
- f. Click the Save Changes button

For those with more advanced computer skills here's a couple fancy alternatives to the above method:

- a. You can use this image instead of the Freecycle logo on your main group page. It still contains the logo but it also includes the statement above:

<http://www.freecycle.org/images/freecycle-tm.jpg>

- b. If you'd like to include the HTML code to make the footer show up properly on a web page, you can go to this page:

<http://www.freecycle.org/tm-code.htm>

highlight the HTML code, and paste it into your group description.

- 4) The term "Freecycle" in text must always be capitalized or otherwise set it off from the surrounding text. Example: Freecycle groups are great!

- 5) Local groups need to use the official Freecycle logo. It must include a TM symbol and appear exactly as it does on <http://www.freecycle.org>

It is ok to put adornments around it and behind it. Never put anything over any portion of the logo or otherwise obscure the basic form of the logo or the TM symbol.

- 6) E-Mail addresses with the word "Freecycle" in them. One should consider using something explanatory in addition to the word "Freecycle" in their e-mail address or ID for clarity's sake. Example: FreecycleSpringfield@hotmail.com

- 7) On your local Yahoo group sites, articles, press releases & automatic notices: The first "prominent display" or introduction of the mark (i.e., the first time you use the term Freecycle in a document) needs to be distinguished from other text with a tm (to be replaced with an (R) eventually, once the trademark is registered). This is in addition to the above attribution statement (the footer-note statement in point 3). So, a Freecycle group site should have a TM by the logo at the top and a TM by the first use of The Freecycle Network (or of the word Freecycle, whichever comes first). The other instances of Freecycle can be without a TM marking, though it is still important to capitalize or color them to show they are not just common words. See Tucson's local group as an example of how to do this:
<http://groups.yahoo.com/group/freecycle/>

- A. In HTML, use the HTML code "Freecycle™" (without the quotes.)
- B. For plain ASCII text documents, in email, and in files in a Yahoo group, use "Freecycle(TM)" (without the quotes).
- C. Other documents, use any method available to create the TM superscript
- D. There's no need to use the TM mark more than once per document.
- E. Do not use the TM mark in email addresses, email subject tag lines (such as [freecyclemytown]), group names, or URLs.

F Do be sure to include the footer in item 3 above, whenever possible

- 8) **OPTIONAL:** For further information about trademarks and how to use them properly, see:

<http://www.inta.org/info/faqs.html>

<http://www.uspto.gov/main/trademarks.htm>

- 9) A current copy of this trademark use document may be obtained at:
<http://freecycle.org/tmfaq.php>

Question and Answers:

What happened to the Freecycle service mark (SM)?

Freecycle formerly used the SM (Service Mark) designation, but for better worldwide uniformity and recognition, we are now using TM instead of SM.

Is it ok for individual email addresses or URLs to include the term "freecycle"?

Yes, but please make sure the word is accompanied by something explanatory, like FreecycleMytownMod.

Do personal emails about Freecycle need to use the TM mark or trademark attribution?

No. Having the trademark attribution in email list footers is enough.

Where are the most common places that "Freecycle" use should be checked?

- Group description/home page
(Management / Description and Appearance / Description - Edit)
- Group email footer text (Management / Messages / Subject Tag and Footer - Edit)
- Group welcome message (Management / Membership / Welcome Message - Edit)
- All automatically sent notices -- especially the Freecycle Etiquette document
- Press releases or other stand-alone documents
- Flyers

What changes should I make to my group's Freecycle Etiquette document?

Make sure all instances of Freecycle are used as an adjective or trade name. Look at the Freecycle etiquette text at <http://freecycle.org/faq.php> for good examples.

Are modified local logo graphics with our TM still ok?

Adding graphics around the mark is fine and fun. We do need to leave the mark itself unaltered (so you're OK as long as the logo and TM are not covered or obscured in any way)

What happens when the Freecycle mark becomes registered?

When this happens, all occurrences of Freecycle(TM) must change to Freecycle(R), and HTML code "Freecycle™" to "Freecycle®".

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Exhibit F to Beal Declaration

How to Use the Freecycle™ Trademark Properly

[Updated on 04-03-06]

We are doing a really good thing here. And, we are also learning as we go, which means there will always be evolution and change. Because the Freecycle concept is unique and amazingly successful, there are many who have and who would try to use it for personal gain and profit. For that reason, The Freecycle Network™ is incorporated as a nonprofit organization, and the Freecycle name and logo are both trademark protected. We need to do our best to properly use the Freecycle trademark so that we don't lose the right to it.

In legalese, the use of the term "Freecycle" denotes a gifting service which is officially approved by the nonprofit organization "The Freecycle Network," and one that the public can expect to adhere to certain standards. The Freecycle Network must approve any email list or web site that uses the term "Freecycle" in its name and provides any sort of exchange service. (A relevant point for us to note internally is that we have to demonstrate a "concerted" effort.)

When using the term "Freecycle" please do the following:

1) While "The Freecycle Network" is a trade name, it also functions as a service mark -- i.e., a source indicator -- so it is okay to use a TM with it.

For example: The Freecycle Network(TM)

When used as a trade name (think proper name), the term "Freecycle" may be used in place of "The Freecycle Network" to allow sentences to be more concise.

For example: While The Freecycle Network has been growing by leaps and bounds, Freecycle also remains true to its core mission.

2) In all other cases, the term "Freecycle" must be used as an adjective, never as a noun or verb. For example:

- Do not say "I'm a freecycler." Do say "I'm a Freecycle member."
- Do not say "Keep on freecycling!" Do say "Keep on recycling, my Freecycle friends!"
- Do not say "Freecycling group." Do say "Freecycle group"
- Do not say "Please Freecycle." Do say "Please join a Freecycle group."
- Do not say "There are 10 freecycles in this state." Do say "There are 10 Freecycle groups in this state."
- Do not say "freecycle's membership." Do say "The Freecycle Network's membership." (Note: new groups may use the word Freecycle in their group name/title, but should not be approved with any variations of the word Freecycle in their name, title or description, like freecycler, freecycling, freecycles.)

3) The term "Freecycle" in text must always be capitalized to set it off from the surrounding text. Example: Freecycle groups are great!

4) Local groups need to use the official Freecycle logo. It must include a TM symbol and appear exactly as it does on <http://www.freecycle.org>. It is okay to put adornments around it and behind it. Never put anything over any portion of the logo or otherwise obscure the basic form of the logo or the TM symbol.

5) OPTIONAL: For further information about trademarks and how to use them properly, see:

<http://www.inta.org/info/faqs.html>
<http://www.uspto.gov/main/trademarks.htm>

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Latest Status Info

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Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-04-11 20:06:00 ET

Serial Number: 78475113

Registration Number: (NOT AVAILABLE)

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(words only): FREECYCLE

Standard Character claim: No

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2006-01-18

Filing Date: 2004-08-27

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
AGOSTO GISELLE MARIE Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-12-06

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. THE FREECYCLE NETWORK

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State or Country of Incorporation: Arizona
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Page 2 of 4

Fax Number: na

GOODS AND/OR SERVICES

International Class: 035

Providing a website which features advertisements for giving and receiving of free property of others on a global computer network

First Use Date: 2003-05-01

First Use in Commerce Date: 2003-05-01

Basis: 1(a)

ADDITIONAL INFORMATION

Color(s) Claimed: The color(s) GREEN, TAN, BLACK, ORANGE, YELLOW is/are claimed as a feature of the mark.

Description of Mark and Any Color Part(s): The mark consists of the word "freecycle" in green with a slight black shadow around the edges of the letter. The wheels and frame of the bicycle are tan and outlined in black. The guitar forms the letter "l" of the word "freecycle". The guitar headstock and fretboard are black with two white stripes suggesting strings. The body of the guitar is shaded in black around the edge with an insertion of a white and orange line running from the top left corner of the body to the neck of the guitar. The interior of the body is orange with a yellow reflection surrounding the left side of the bridge and completely surrounding the strings. Four black lines, suggesting strings, begin above the sound hole and stop below the bridge.

Design Search Code(s):

18.03.01 - Bicycles; Tricycles, Unicycles

22.01.06 - Banjos; Guitars, Ukuleles

27.03.05 - Objects forming letters or numerals

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-01-18 - Opposition instituted for Proceeding

2006-01-18 - Opposition papers filed

2006-01-17 - Published for opposition

2005-12-28 - Notice of publication

2005-11-30 - Law Office Publication Review Completed

2005-11-25 - Assigned To LIE

2005-11-22 - Approved for Pub - Principal Register (Initial exam)

Latest Status Info

Page 3 of 4

2005-11-22 - EXAMINERS AMENDMENT E-MAILED
2005-11-22 - Examiners Amendment -Written
2005-11-10 - Priority Action E-Mailed
2005-11-10 - Priority Action Written
2005-11-10 - Previous allowance count withdrawn
2005-10-28 - Withdrawn From Pub - Og Review Query
2005-10-01 - Law Office Publication Review Completed
2005-09-30 - Assigned To LIE
2005-09-28 - Approved for Pub - Principal Register (Initial exam)
2005-09-28 - Examiner's Amendment Entered
2005-09-20 - EXAMINERS AMENDMENT E-MAILED
2005-09-20 - Examiners Amendment -Written
2005-09-17 - Teas/Email Correspondence Entered
2005-09-13 - Communication received from applicant
2005-09-13 - TEAS Response to Office Action Received
2005-06-15 - LETTER OF SUSPENSION E-MAILED
2005-06-15 - Suspension Letter Written
2005-05-06 - Teas/Email Correspondence Entered
2005-04-25 - Communication received from applicant
2005-04-29 - Amendment From Applicant Entered
2005-04-22 - Communication received from applicant
2005-04-25 - TEAS Response to Office Action Received
2005-04-22 - PAPER RECEIVED
2005-03-30 - Non-final action e-mailed
2005-03-30 - Non-Final Action Written
2005-03-28 - Case file assigned to examining attorney
2004-09-03 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona
06-CV-173-TUC-RCC
Exhibit H to Beal Declaration

Trademark Trial and Appeal Board Electronic Filing System: <http://esta.uspto.gov>ESTTA Tracking number: **ESTTA62464**Filing date: **01/18/2006**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	FreecycleSunnyvale		
Entity	Unincorporated association	Citizenship	California
Address	P.O. Box 1 Sunnyvale, CA 94807 UNITED STATES		
Attorney information	Ian N. Feinberg Mayer Brown Rowe & Maw LLP Two Palo Alto Square, Suite 300 3000 El Camino Real Palo Alto, CA 94306 UNITED STATES ifeinberg@mayerbrownrowe.com,eevans@mayerbrownrowe.com Phone:650-331-2055		

Applicant Information

Application No	78475113	Publication date	01/17/2006
Opposition Filing Date	01/18/2006	Opposition Period Ends	02/16/2006
Applicant	THE FREECYCLE NETWORK 901 NORTH PERRY AVENUE TUCSON, AZ 85705 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2003/05/01 First Use In Commerce: 2003/05/01 All goods and services in the class are opposed, namely: Providing a website which features advertisements for giving and receiving of free property of others on a global computer network

Attachments	Freecycle Not of Oppos Trademark.PDF (8 pages) TTAB_exhibits.pdf (29 pages)
Signature	/Ian N. Feinberg/
Name	Ian N. Feinberg
Date	01/18/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 78/475,113
Filed: August 27, 2004
For the mark: FREECYCLE
Published in the Official Gazette on: January 17, 2006

FreecycleSunnyvale,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
The Freecycle Network,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, FreecycleSunnyvale, believes that it will be damaged by registration of the mark FREECYCLE as shown in the above-identified application, and hereby opposes the same pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1063 (a).

The grounds for opposition are as follows:

1. Opposer FreecycleSunnyvale is an unincorporated non-profit association with its principal place of business in Sunnyvale, California, which is located in the Northern District of California.
2. Upon information and belief, applicant The Freecycle Network is an Arizona non-profit corporation with its principal place of business in Tucson, Arizona.
3. Freecycling is the common or generic name for the practice of recycling by giving something away to another, often a person who is poor or disadvantaged in some way, for free. A person who freecycles is called a freecycler.

4. FreecycleSunnyvale promotes freecycling by providing support and advice to freecyclers who wish to create Internet fora for freecycling.

5. The Freecycle Network also promotes freecycling by providing support and advice to freecyclers who wish to create Internet fora for freecycling.

6. Freecycling is the common or generic name for the practice of recycling by giving something away to another, often a person who is poor or disadvantaged in some way, for free. A person who freecycles is called a freecycler. Freecycling has two principal advantages for society: (1) it reduces landfill by preventing or delaying the disposal of items unwanted by their current owners; and (2) it gives those same items to others for free, who do want them and may be unable to afford to purchase them.

7. Many freecyclers announce the availability of the items they wish to give away online by, for example, sending an email message to an email distribution list. Many of the email distribution lists freecyclers use are hosted by Yahoo! as part of its Yahoo! Groups online service.

8. Freecyclers who use the Yahoo! Groups online service to freecycle items enter into a contract with Yahoo! In exchange for their compliance with Yahoo!'s conditions, the freecyclers receive Yahoo!'s online services. These services allow freecyclers to reach many other freecyclers in their area by sending a single email message.

9. The Freecycle Network was founded in May 2003. The Freecycle Network helped popularize freecycling by assisting local freecycling groups, including FreecycleSunnyvale, in using Yahoo!'s online services to freecycle items.

10. FreecycleSunnyvale was founded in October 2003. It entered into a contractual relationship with Yahoo! and used Yahoo!'s online services to assist freecyclers in the Sunnyvale, California area freecycling items.

11. FreecycleSunnyvale used a Yahoo! Group with the name "freecyclesunnyvale."

12. FreecycleSunnyvale initially received enthusiastic support from The Freecycle Network.

13. The Freecycle Network granted FreecycleSunnyvale a license in 2003 to use a mark derived from the mark covered by the present application. On or about October 9, 2003, after a member of FreecycleSunnyvale requested assistance in creating a graphic logo reading "FreecycleSunnyvale," the Board Chair and Executive Director of The Freecycle Network granted permission to do so, provided that the logo was not used for commercial purposes. The text of the email granting permission reads: "Yeah, Sunnyvale! ... You can get the neutral logo from <http://www.freecycle.org> , just don't use it for commercial purposes or maybe Mark or Albert can help you to do your own fancy schmancy logo!"

14. Freecyclers and The Freecycle Network treated freecycling as the common or generic name for giving something away to another for free. In August 2004, The Freecycle Network's home page included, among others, the references to freecycling:

(a) "Number of cities freecycling: 1,210"

(b) "Number of people freecycling: 406,949"

(c) "Have fun and keep on Freecycling!"

(d) "How does Freecycling work?"

(e) "Who can Freecycle?"

The Freecycle Network submitted a copy of the home page of its website, containing these uses of freecycle and freecycling in a generic sense, as a specimen to its pending application for registration of the mark FREECYCLE on the Principal Register on or about August 27, 2004. A copy of the specimen submitted is attached as Exhibit 1.

15. The Freecycle Network's use of the terms freecycle and freecycling in a generic sense is consistent with prevailing practice in the national media. Examination of publicly-accessible media sources reveals hundreds of newspaper and magazine articles that use freecycle

and freecycling to refer to the practice of recycling by giving something away to another for free.

Examples include:

- (a) "If a true packrat hordes [sic], a 'freecycler' can't stand to see something that might be useful to someone go to waste, languishing unused in a musty garage, attic, bottom dresser-drawer or—worse yet—a landfill." Katharine Mieszkowski, *From each according to his junk, to each according to her need*, Salon.com, Nov. 23, 2003, at <http://www.salon.com/tech/feature/2003/11/25/freecycle/print.html> (Attached as Exhibit 2);
- (b) "Freecyclers use Yahoo Groups as a free bulletin board, requiring registration only. Givers post their excess items on Yahoo and takers send an e-mail saying they will come and pick it up." Mike Cassidy, *Freecycling Movement Gains Ground in Valley*, San Jose Mercury News, Jan. 27, 2004, at C1 (Attached as Exhibit 3);
- (c) "Dusty but new exercise equipment, a five-person hot tub, and enough white Ikea bookshelves to furnish a small college town have been posted online through a new group that practices freecycling, the giving away of useful but unwanted goods to keep them out of landfills and maybe help someone less fortunate in the process." Tina Kelley, *One Sock, With Holes? I'll Take It; Freecycling Brings Castoff Goods Back From the Bin*, The New York Times, March 16, 2004, at B1 (Attached as Exhibit 4);
- (d) "Known as 'freecycling,' the approach creates Web-based communities in cities across the country that allow members to post by e-mail a listing of items they are looking to unload. The catch? Everything much be given away free." *Gambits and Gambles in the World of Technology*, The Wall Street Journal, May 6, 2004 (Attached as Exhibit 5); and
- (e) "And just how does one freecycle? . . . If there's an object, or even a service, you want to give or receive, you post an e-mail, leave a contact and, if someone bites,

arrange for a pickup. The rules are simple: no politics or spam, and everything must be free.” Richard Jerome and Strawberry Saroyan, *Free For All*, People, May 10, 2004, at 195 (Attached as Exhibit 6).

16. Despite the generic nature of the terms freecycle and freecycling, The Freecycle Network filed the instant application for the registration of the mark FREECYCLE and a graphic logo using that mark on the Principal Register of trademarks on August 27, 2004.

17. In late 2004 or early 2005, The Freecycle Network altered the text of its website to remove some, but not all, uses of freecycle and freecycling in a generic sense. The Freecycle Network's website continues to include many hundreds of instances where freecycle and freecycling are used in the generic sense to refer to the practice of recycling by giving something away to another for free.

18. In January or February 2005, The Freecycle Network began to assert the right to exclusive use of the terms freecycle and freecycling.

19. The Freecycle Network has created usage guidelines for users of its services. These guidelines direct users to avoid using the terms freecycle and freecycling in a generic sense.

20. The Freecycle Network has not found an adequate substitute for the generic term freecycling. “[A] gifting or exchange-oriented [web]site” or “gifting or exchanging unwanted items with fellow users” have not achieved wide acceptance.

21. The Freecycle Network has replaced the simple question “How does Freecycling work?” on its home page with “How does it work?”

22. FreecycleSunnyvale will be damaged by the registration of the mark FREECYCLE and/or the graphic logo The Freecycle Network had licensed to FreecycleSunnyvale for non-commercial use on the Principal Register or the Supplemental Register because such registration would grant The Freecycle Network an improper monopoly over the use of the generic terms freecycle and freecycling and/or the logo licensed to FreecycleSunnyvale. The Freecycle Network has already asserted such an improper monopoly

by, among other things, inducing Yahoo! Inc., FreecycleSunnyvale's online service provider, to terminate FreecycleSunnyvale's Yahoo! Group online service by claiming that the group's name, freecyclesunnyvale, and/or its use of the logo licensed to it infringed The Freecycle Network's trademark rights.

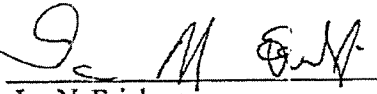
WHEREFORE, Opposer, FreecycleSunnyvale, believes and alleges that freecycle is a generic term. In the alternative, FreecycleSunnyvale believes and alleges that The Freecycle Network has dedicated the terms freecycle and freecycling and/or the graphic logo The Freecycle Network had licensed to FreecycleSunnyvale for non-commercial use to the public domain. In the second alternative, FreecycleSunnyvale believes and alleges that The Freecycle Network has engaged in uncontrolled or naked licensing of the terms freecycle and freecycling and/or the graphic logo The Freecycle Network had licensed to FreecycleSunnyvale for non-commercial use and thereby abandoned any trademark rights it might otherwise have acquired. FreecycleSunnyvale therefore believes and alleges that Applicant's FREECYCLE is not registrable on the Principal Register or on the Supplemental Register.

Opposer requests that:

1. Judgment in the present opposition be entered in favor of the Opposer and against Applicant, with prejudice;
2. The present opposition be sustained; and
3. Registration on the application of Applicant for the trademark FREECYCLE, Serial No. 78/475,113, be rejected and refused.

Respectfully submitted,

FREECYCLESUNNYVALE

By: 
Ian N. Feinberg
MAYER, BROWN, ROWE & MAW LLP
Two Palo Alto Square
3000 El Camino Real
Palo Alto CA 94306
(650) 331-2055

Attorney for Opposer

EXHIBIT 2

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Attorneys for Plaintiff

THE FREECYCLE NETWORK, INC.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

THE FREECYCLE NETWORK, INC.,
an Arizona non-profit organization,

Plaintiff,

v.

TIM OEY and JANE DOE OEY,

Defendants.

CASE NO. 06-CV-00173-RCC

DECLARATION OF DERON BEAL IN
SUPPORT OF THE FREECYCLE
NETWORK, INC.'S REPLY TO
DEFENDANTS' OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION

Date: May 9, 2006

Time: 3:00 p.m.

Before: Honorable Raner C. Collins

Location: Courtroom 5B

I, Deron Beal, declare as follows:

1. I am the founder, Executive Director and Board Chair of The Freecycle Network, Inc. ("The Freecycle Network"). I make this declaration in support of The Freecycle Network's Reply to Defendants' Opposition to Motion for Preliminary Injunction. I have personal

FROM :The Freecycle Network

FAX NO. :5203273771

May. 08 2006 06:37PM P1

knowledge of the facts stated and if called to testify as a witness, would competently testify thereto.

2. The Freecycle Network, Inc. is a nonprofit corporation incorporated under the laws of the State of Arizona. The Freecycle Network encourages and helps to coordinate the efforts of member groups throughout the world to reuse, recycle, and gift goods. The organization was started in Tucson, Arizona, with a single recycling group and the Web site. Today, The Freecycle Network is a worldwide organization, with thousands of local recycling groups and more than an estimated two million individual members. Publications such as CNN.com, The Motley Fool, CBS News, and The Washington Post have heavily praised The Freecycle Network and its promotion of the reusing, recycling, and gifting of goods.

3. The overwhelming majority of the first fifty (50) results of a search for the term "Freecycle" using the Internet search engine Google™ ("Google") refer to The Freecycle Network. Attached hereto as Exhibit A is a true and correct copy of a search for the term "Freecycle" using Google.

4. The Freecycle Network is the world's largest Internet Web site dedicated to the promotion of reusing, recycling, and gifting. It has approximately 3500 groups worldwide in 67 countries and relies on over 6000 volunteers to make its recycling efforts function internationally. In an average month, The Freecycle Network's Web site gets about 14.8 million overall requests which translates to about 2.2 million page requests a month. The local member organizations of The Freecycle Network get a total of approximately 15-20 million hits per month.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Tucson, Arizona on May 8, 2006.

By: 

Deron Beal

EXHIBIT A

freecycle - Google Search

Page 1 of 5

[Sign in](#)

Google

[Web](#) [Images](#) [Groups](#) [News](#) [Froogle](#) [Maps](#) [more »](#)

freecycle

Search

[Advanced Search](#)
[Preferences](#)

Web

Results 1 - 50 of about 1,440,000 for **freecycle**. (0.11 seconds)**Freecycle**

Freecycle is an email list where people give away things that they no longer need for free.

www.freecycle.org/ - Similar pages[Display All Freecycle Groups](#)[FreecycleFinder — Latest ...](#) - [FAQ Pages](#) - [Freecyclelopedia](#)[More results from www.freecycle.org »](#)

Sponsored Links

[Teen Girls Want Banged](#)

Thousands of Local Hot Adult Ads

See Photos, Email These Girls Free

Adornica.net

freecycle.comfreecycle.com.www.freecycle.com/ - 1k - [Cached](#) - [Similar pages](#)**[Freecycle Deutschland](#)** - [[Translate this page](#)]Homepage der deutschen **Freecycle**-Gruppen.de.freecycle.org/ - 2k - [Cached](#) - [Similar pages](#)**[freecycleportland : Freecycle™ Portland](#)**

[freecycleportland: Freecycle™ Portland](#). ... **Freecycle** instructional Video Click here to enlarge. ... **Freecycle** and the **Freecycle** logo are trademarks of ...

groups.yahoo.com/group/freecycleportland/ - 17k - [Cached](#) - [Similar pages](#)**[freecyclenewyorkcity : Freecycle \(TM\) New York City](#)**[freecyclenewyorkcity: Freecycle \(TM\) New York City](#).groups.yahoo.com/group/freecyclenewyorkcity/ - 17k - [Cached](#) - [Similar pages](#)[[More results from yahoo.com](#)]**[United Kingdom \(UK\) Freecycle Groups' Homepage](#)**

Freecycle groups match people who have things they want to get rid of with people who can use them, and so keeping usable items out of landfills.

uk.freecycle.org/ - 10k - [Cached](#) - [Similar pages](#)**[Freecycle in Norfolk](#)**

Norfolk **Freecycle** Groups. We have moved! Please update your bookmarks to: ...

Freecycle and the **Freecycle** logo are trademarks of The **Freecycle** Network in ...

www.freecycle-norfolk.org.uk/ - 2k - [Cached](#) - [Similar pages](#)**[MAKE: Blog: FreeCycle](#)**

[logo3.gif](#) **FreeCycle** is a hub of email lists from different cities where you can post WANTED, OFFERED, or TAKEN messages to get, give and look for free stuff ...

www.makezine.com/blog/archive/2005/03/freecycle.html - 34k - [Cached](#) - [Similar pages](#)**[Freecycle Network - Wikipedia, the free encyclopedia](#)**

The **Freecycle** Network (often abbreviated TFN) is a corporation registered as a ... By 2006, The **Freecycle** Network extended to over 3000 groups with almost 2 ...

en.wikipedia.org/wiki/Freecycle_Network - 25k - [Cached](#) - [Similar pages](#)**[Freecycle - Wikipedia, the free encyclopedia](#)**

From Wikipedia, the free encyclopedia. Jump to: navigation, search. **Freecycle** may refer to: ... Retrieved from "http://en.wikipedia.org/wiki/**Freecycle**" ...

en.wikipedia.org/wiki/Freecycle - 10k - Cached - Similar pages
 [[More results from en.wikipedia.org](#)]

Rhondda Cynon Taff **Freecycle**

News, help and advice from Rhondda Cynon Taff's biggest recycling organisation.
freecycle.rhonddacynontaff.org/ - 57k - Cached - Similar pages

Howstuffworks "The **Freecycle** Network: Gift Economy"

The **Freecycle** Network hopes to encourage a "worldwide gift economy" -- one old ... In this article, we'll find out how the **Freecycle** Network got started, ...
money.howstuffworks.com/freecycle-network.htm - 36k - Cached - Similar pages

WorldChanging: Another World Is Here: **Freecycle**

As Andrew puts it, **Freecycle** combines "the Gift Economy, Sustainable Thinking, ... All you do is sign up for the **Freecycle** list for your hometown (there are ...
www.worldchanging.com/archives/000444.html - 15k - Cached - Similar pages

FreeCycle Computers

A non profit organization that accepts donated computers, refurbishes them and gives them to low income families.
www.freecycle-computers.4t.com/ - 23k - Cached - Similar pages

Freecycle - Summary [Savannah]

Freecycle is a beat slicer running on GNU/Linux platform, ... **Freecycle** projects can now be saved and loaded. **Freecycle** project file contains the wave data, ...
savannah.nongnu.org/projects/freecycle/ - 19k - Cached - Similar pages

Freecycle: A beat slicer

Freecycle is a beat slicer running on GNU/Linux platform using the QT toolkit, ... **Freecycle** is released under the GNU GPL Licence by Predrag Viceić.
freecycle.redsteamrecords.com/ - 11k - Cached - Similar pages

The Journey - Rodney Olsen's blog about life, faith and family

These are just a few examples of how we've used **Freecycle**. It's a worldwide, free network that helps to keep what some consider to be junk out of landfill. ...
rodneyolsen.blogspot.com/2006/04/freecycle.html - 22k - Cached - Similar pages

Freecyclers, **Freecycle** Meetups, events, clubs and groups in your area

Meet other local people who use the **Freecycle** Network! Gather with others who enjoy the exchange of free stuff and discuss topics such as how freecycling ...
freecycle.meetup.com/ - 22k - Cached - Similar pages

Freecycle - Division of Solid Waste Services

Try **Freecycle** to find new homes for these things. What changes hands through **Freecycle**? Clothing, furniture, electronics, building supplies, instruments, ...
www.montgomerycountymd.gov/content/dpwt/SolidWaste/collection_services/recycling/freecycle.asp - 16k - Cached - Similar pages

Lincoln Freecyclers

Lincoln Freecyclers. Reduce Waste, Preserve the Earth, Spend Less, Save Energy. Index · User list · Rules · Register · Login · Return to Freecyclers ...
lincoln.freecyclers.org.uk/ - 18k - Cached - Similar pages

Freecycle - Waste Management

Freecycle is a grassroots community movement and nonprofit organization, ... Membership in **Freecycle** is free and open to all communities and all members ...
www.wm.com/wm/freecycle.asp - 7k - Cached - Similar pages

Freecycle and On-Line Local Community Software (by Jeremy Zawodny)

My local **freecycle** group, sanjosefreecycle is just a lightly moderated Yahoo! ... As a many months subscriber to my local **Freecycle** lists, I haven't found ...
jeremy.zawodny.com/blog/archives/006501.html - 30k - [Cached](#) - [Similar pages](#)

What's Up (or Down) at Freecycle?

Many of the groups leaving **FreeCycle** are showing up in the directory at FreeSharing.org. ... realized by **Freecycle.org** or the **Freecycle Network Inc.** ...
www.businessweek.com/the_thread/techbeat/archives/2005/08/whats_up_at_fre.html - 380k - [Cached](#) - [Similar pages](#)

Cool Tool: Freecycle

The worldwide **Freecycle** Network is a grassroots movement of people who are giving (& getting) stuff ... To sign up, find your city on the **Freecycle** website. ...
www.kk.org/cooltools/archives/000488.php - 15k - [Cached](#) - [Similar pages](#)

Freecycle.org

Check out <http://freecycle.org/> to find your local Yahoo group for **Freecycle**. ... **Freecycle** is really a great site and concept. I've moved a bunch so have ...
forums.dealofday.com/Freecycleorg-t-146755.html - 8k - [Cached](#) - [Similar pages](#)

Marlies' Creative Universe: Freecycle

The worldwide **Freecycle**™ Network is made up of many individual groups across the ... **Freecycle.org** connects pack rats with people who want their castoffs ...
www.mcuniverse.com/05/Freecycle.173.0.html - 66k - [Cached](#) - [Similar pages](#)

Is Freecycle Exceeding the Speed Limit? -- Chilling Effects ...

I'm writing on behalf of The **Freecycle Network(TM)** to notify you that your group is not an official **Freecycle** group and therefore does not have permission ...
www.chillingeffects.org/trademark/notice.cgi?NoticeID=3148 - 37k - [Cached](#) - [Similar pages](#)

As Freecycle grows, idealism and reality collide | By Matt Weiser ...

The first check arrived in February, and visitors to **Freecycle.org** will now ... Despite **Freecycle's** growing pains, Tilkin said most moderators and users ...
www.grist.org/news/maindish/2005/05/19/weiser-freecycle/ - 28k - [Cached](#) - [Similar pages](#)

Midquel... » Freecycle

However **Freecycle** is a lot more localized (at least in metro DC) and you have to live or work in the city of the **Freecycle** list to subscribe to. ...
www.midquel.com/?p=277 - 22k - [Cached](#) - [Similar pages](#)

Bostonist: Recycle or Freecycle?

That's where **FreeCycle** comes in. Rather than just leave perfectly good stuff ... **FreeCycle** is a tad bit more moderated than craigslist, but it works well. ...
www.bostonist.com/archives/2006/03/22/recycle_or_freecycle.php - 57k - [Cached](#) - [Similar pages](#)

Ming the Mechanic: Freecycle TM

I mentioned **Freecycle** recently. A site and a network for gift giving. Which is great. ... And the site is now blemished with "**Freecycle TM**". Looks stupid. ...
ming.tv/flemming2.php/?__show_article/_a000010-001563.htm - 17k - [Cached](#) - [Similar pages](#)

Technorati Tag: freecycle

Problems with **FreeCycle**? Issues with **FreeCycle** Moderators? ... Frustration with **FreeCycle** and **FreeCycle** moderators has lead to lots of complaints and a ...
www.technorati.com/tags/freecycle - 51k - [Cached](#) - [Similar pages](#)

CJ's amazing journal of studyness - Freecycle database

So here's an example of what this database of **freecycle** might be good for. Tags: database, **freecycle**, recycling · Leave a comment. profile. CJ Collier ...
 cjcollier.livejournal.com/216811.html - 30k - [Cached](#) - [Similar pages](#)

FREE Services at Free Searching - The Biz Reference Tool. 'FIND it ...

A friend of mine introduced me to the **FreeCycle** web site and I'm passing it on to ... **FREE: FreeCycle**, The worldwide **Freecycle** Network is made up of many ...
 www.freesearching.com/free.htm - 42k - [Cached](#) - [Similar pages](#)

Purdue Online - FreeCycle

I was the owner of the original Lafayette, Indiana **Freecycle** group. For reasons that aren't really relevant to this post, I've left the **Freecycle** network ...
 www.purdueonline.com/showthread.php?t=2682 - 35k - [Cached](#) - [Similar pages](#)

Freecycle Connecticut - Clear Your Clutter By Giving Away Items ...

Freecycle Groups Help Connecticut Residents Clear Clutter, Find Free Stuff ... **Freecycle** is a network of groups organized geographically that helps ...
 hartford.about.com/od/househome/qt/freecyclelect.htm - 29k - [Cached](#) - [Similar pages](#)

[RTF] (About 900 words)

File Format: Rich Text Format - [View as HTML](#)

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FREECYCLE.COM

Freecycle is the brainchild of Deron Beal, manager for a nonprofit ... After investigating **freecycle.org**, she decided to take the plunge and set up a site ...
 www.valcorerecycling.org/affair/archives/2005-01-23.htm - 15k - [Cached](#) - [Similar pages](#)

HouseofStrauss.co.uk - Web Links - Freecycle.org

HouseofStrauss.co.uk A resource of insight for conscious living. Articles, news and discussion on alternative health, radical lifestyle, natural healing, ...
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GreenGonzo - Freecycle UK Search

Greengonzo lets you find things people are giving away for free in your area. Its like eBay, except everything's completely free.
 www.greengonzo.com/ - 9k - [Cached](#) - [Similar pages](#)

www.yorkrecycling.net

19th March 2006: York **Freecycle**™ is now has a Yahoo! Groups page. Click here for details. 28th October 2005: Our Recycling Cheats and Tips page is now ...
 www.yorkrecycling.net/ - 4k - [Cached](#) - [Similar pages](#)

Freecycle at Nuclear Moose Candy

This is to announce that there is now an official, sanctioned **Freecycle** ... The **Freecycle** Network™ is made up of many individual groups across the globe. ...
 nuclearmoose.com/archives/2005/09/22/freecycle/ - 14k - [Cached](#) - [Similar pages](#)

About Freecycle

Who: Livingston **Freecycle** has 2179 members and is one of 3370 **Freecycle** ... Details: **www.freecycle.org** for general information about the program or visit ...
 www.mlive.com/news/aanews/index.ssf?/base/news-6/1141400591296890.xml&coll=2 - 26k - [Cached](#) - [Similar pages](#)

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
CIVIL MINUTES - GENERAL

Date: April 24, 2006

Civil Case No. CV-06-173-TUC-RCC

Title THE FREECYCLE NETWORK, INC., ETC, VS TIM OEY,

Present: HON. RANER C. COLLINS

Deputy
Clerk: Maureen Gorski

Court
Reporter: Bonnie Brunotte

ATTORNEY(s) FOR PLAINTIFF

ATTORNEY(s) FOR DEFENDANT

Lisa Kobialka/Shefali Milczarek-Desai

Ashley Kirk
Ian Feinberg/Dennis Corgill-telephonic

PROCEEDINGS: XX Open Court

HEARING ON PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER:

Counsel present arguments to the Court.

IT IS ORDERED taking UNDER ADVISEMENT Plaintiff's Motion for Temporary
Restraining Order (#5)

CC: RCC, COUNSEL

EXHIBIT 4

MAY 01 2006 15:20 FR MBRM LLP

503312061 TO 38384350

P.01

Mayer, Brown, Rowe & Maw LLPTwo Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, California 94306-2112Main phone: (650) 331-2000
Main fax: (650) 331-2060

M	A	Y	E	R
B	R	O	W	N
R	O	W	E	
&	M	A	W	

FACSIMILE COVER SHEET

FROM:	Dennis S. Corgill	Date:	May 1, 2006
Direct Tel:	(650) 331-2058	Pages:	2
Direct Fax:	(650) 331-4558	ALL PAGES MUST BE NUMBERED	

TO THE FOLLOWING:

Name	Company	Fax #	Telephone #
Esha Bandyopadhyay, Esq.	Perkins Cole LLP	(650) 838-4350	(650) 838-4355

MESSAGE:

Please see attached correspondence dated May 1, 2006.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS BY MAIL. THANK YOU.

IF YOU HAVE ANY TRANSMISSION DIFFICULTY,
PLEASE CONTACT THE FACSIMILE DEPARTMENT AT (650) 331-2029

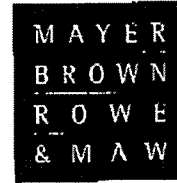
Berlin Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles New York Palo Alto Paris Washington, D.C.
Independent Mexico City Correspondent: Jauregui, Navarrete y Nader S.C

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MAY 01 2006 15:20 FR MBRM LLP

503312061 TO 98384350

P.02



May 1, 2006

VIA FACSIMILE (650.838.4350) and U.S. MAIL

Esha Bandyopadhyay
Perkins Coie LLP
101 Jefferson Drive
Menlo Park, CA 94025-1114

Re: *The Freecycle Network, Inc. v. Tim Oey and
Jane Doe Oey*

Mayer, Brown, Rowe & Maw LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
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Main Fax (650) 331-2060
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Dennis S. Corgill
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Direct Fax (650) 331-4558
dcorgill@mayerbrownrowe.com

Dear Esha:

This letter responds to your letter dated April 28, 2006, concerning Tim Oey and the temporary restraining order issued by Judge Collins on April 24, 2006 ("TRO").

First, please understand that we represent FreecycleSunnyvale. We do not represent Tim Oey as an individual.

Second, as counsel for FreecycleSunnyvale, we can assure you that FreecycleSunnyvale and its members intend to comply fully with the TRO.

Third, as counsel for FreecycleSunnyvale, we disagree with your interpretation of the TRO. The TRO requires Tim Oey and persons who participate with him to refrain from future conduct. The TRO does not compel action or apply to past conduct. TFN knew about all of the internet postings attached to your letter before TFN filed its lawsuit in Arizona, but TFN failed to draft a proposed order that compels any action with respect to the TRO.

Fourth, on review, we do not understand how any of the contents of the attachments to your letter, even if attributed FreecycleSunnyvale, violate the TRO. We would appreciate your help in identifying which portions of which attachments violate which specific portions of the TRO.

I look forward to your response and to cooperating with you to assure that FreecycleSunnyvale and its members comply with the TRO. Or, we would be happy to take this matter up with Judge Collins before the hearing scheduled for May 9, 2006.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Dennis S. Corgill".

Dennis S. Corgill

Berlin Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles New York Palo Alto Paris Washington, D.C.
Independent Mexico City Correspondent: Jauregui, Navarrete y Nader S.C.

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** TOTAL PAGE.02 **

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Attorneys for Plaintiff
THE FREECYCLE NETWORK, INC.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

THE FREECYCLE NETWORK, INC.,
an Arizona non-profit organization,

Plaintiff,

v.

TIM OEY and JANE DOE OEY,

Defendants.

CASE NO. CV 06-173 RCC

**DECLARATION OF DERON BEAL IN
SUPPORT OF THE FREECYCLE
NETWORK, INC.'S OPPOSITION TO
DEFENDANTS' MOTION TO STAY
OR TRANSFER**

I, Deron Beal, declare as follows:

1. I am the founder and Executive Director of The Freecycle Network, Inc. ("The Freecycle Network"). I make this declaration in support of The Freecycle Network's Opposition

to Defendants' Motion to Stay and Transfer. I have personal knowledge of the facts stated and if called to testify as a witness, would competently testify thereto.

2. The Freecycle Network, Inc. is a nonprofit corporation incorporated under the laws of the State of Arizona. The Freecycle Network was founded in Tucson. The Freecycle Network's only office and headquarters are located in Tucson. Further, all board members of The Freecycle Network are located in Tucson, Arizona.

3. The Freecycle Network maintains its own Web site to assist members in their efforts to recycle, reuse, and gift goods. The Web site is located at the URL www.freecycle.org. The site also maintains a directory of all member groups, which lists the individual group links and provides resources for volunteers to create new local recycling groups.

4. Defendant Tim Oey was a very active member of The Freecycle Network from early 2004 until late 2005, during which time he held various key positions within The Freecycle Network.

5. Mr. Oey was the head of the New Website Planning Team for The Freecycle Network. He was tasked with leading a group of the top moderators for The Freecycle Network worldwide in compiling a wish list / plan for an entirely new global website for The Freecycle Network. As the head of the New Website Planning Team, Mr. Oey was to provide his recommendations to The Freecycle Network's only office based in Tucson. This role was addition to his separate efforts related to his local group located in Sunnyvale.

6. Mr. Oey was also the head of FreecycleNext, which was a group formed by The Freecycle Network specifically for the moderators of all of The Freecycle Network's local member groups worldwide. The Freecycle Network formed FreecycleNext so that all moderators beyond the top 25 also had a forum to provide a wish list and input for our new global website design project. As the head of The Freecycle Network's Freecycle Next, Mr. Oey was tasked to collect comments, provide suggestions and make recommendations to The Freecycle Network's only office based in Tucson.

7. Mr. Oey was a member of The Freecycle Network's Penguin Patrol, a further international planning group consisting of some 4-6 worldwide moderators specifically tasked with developing guidelines and policies for the protection of The Freecycle Network's intellectual property, including copyright and trademark protection. Mr. Oey personally drafted and developed The Freecycle Network's Trademark and Copyright Policy and frequently commented on how to improve upon these guidelines and make these guidelines user friendly.

8. Mr. Oey also published these guidelines to the member groups. He provided advice and made numerous detailed recommendations to The Freecycle Network about multiple aspects of its intellectual property. For example, he provided detailed instructions on how to use, protect and identify The Freecycle Network's intellectual property in emails or to post trademark and copyright information on The Freecycle Network's website. In numerous emails, Mr. Oey provided The Freecycle Network with recommendations, suggestions and advice about protecting its intellectual property.

9. For example, Mr. Oey recommended to The Freecycle Network as a member of the Penguin Patrol that The Freecycle Network members should not use the "superscript TM symbol [in emails] . . . because most email programs will not display it right to the recipient." *See* Exhibit 1, attached hereto.

10. Another example includes one of many instances where Mr. Oey provided his "recommendation" on The Freecycle Network's Trademark and Copyright policy. Mr. Oey made on what the text version of The Freecycle Network's Trademark and Copyright policy should say so it could be sent cleanly via email. *See* Exhibit 2, attached hereto.

11. Mr. Oey was also one of 4-5 leaders of The Freecycle Network's main worldwide moderator group, the Freecycle Modsquad, which continues to be the main worldwide group where rules are discussed and voted on by moderators, binding polls of moderators are taken and official notices are made to moderators worldwide. He shared this worldwide leadership with me and 2-3 other moderators. As a leader of The Freecycle Network's "Modsquad," Mr. Oey was tasked with helping lead this main group consisting of well over a thousand moderators worldwide

at the time, informing worldwide moderators, collecting comments, providing suggestions and making recommendations to The Freecycle Network's only office based in Tucson in this regard. This leadership role was in addition to and separate from any Sunnyvale-specific or other locally-oriented volunteer moderating of any groups that Mr. Oey was involved in.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Tucson, Arizona on May 18, 2006.

By: 

Deron Beal

EXHIBIT 1

----- Original Message -----

From: Tim Oey

To: PenguinPatrol@yahooogroups.com

Sent: Tuesday, March 08, 2005 2:30 AM

Subject: RE: [PenguinPatrol] Timeline

I think we should roll with what we have and just be ready to answer questions and modify our approach as we go.

The only update that I had on the last version I saw sent out was changing text "the ascii version" to "the symbol".

TIP: If you are sending an email and wish to add the TM, it makes sense to use the (TM) version rather than the superscript TM symbol (even if you know how to generate the ascii version) because most email programs will not display it right to the recipient.

to

TIP: If you are sending an email and wish to add the TM, it makes sense to use the (TM) version rather than the superscript TM symbol (even if you know how to generate the symbol) because most email programs will not display it right to the recipient.

Cheers,
Tim

At 12:11 PM -0800 3/7/05, Freecycle Copyright Agent wrote:
>So I assume by your collective silence that all of
>the TM changes are in and we're ready to roll them
>out to the GOAs? I saw that Melissa won't be online
>for a few weeks. Betty- are you comfortable taking

>on the Q&A stuff yourself? You will *not* be
>responsible for figuring out the answers to hard
>questions- you can just bring them back here, we'll
>hash them out together, and then you'll have a form
>letter you can use for the future.
>Anything else before we take the leap?
\

Please note that this email message is intended only for the addressee(s) and contains information that may be confidential and/or copyrighted. If you are not the intended recipient please notify the sender by reply email and immediately delete this email. Disclosure, distribution or reproduction of this email by anyone is strictly prohibited.

Freecycle and the Freecycle logo are either registered trademarks or trademarks of The Freecycle Network in the United States and/or other countries.

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- To visit your group on the web, go to:
<http://groups.yahoo.com/group/PenguinPatrol/>
- To unsubscribe from this group, send an email to:
PenguinPatrol-unsubscribe@yahoogroups.com
- Your use of Yahoo! Groups is subject to the [Yahoo! Terms of Service](#).

EXHIBIT 2

----- Original Message -----

From: Tim Oey
To: PenguinPatrol@yahoogroups.com
Sent: Wednesday, March 16, 2005 1:33 AM
Subject: [PenguinPatrol] My recommendations on Trademark policy

Hi all,

Below and posted in the Penguin files is my recommendation on what the plain text version of the Freecycle Trademark and Copyright policy should say so that it can sent cleanly by email.

Corrections:

- removed the html attribution, it just won't work cleanly, substituted a pointer to some html others can use
- removed the extra note about updating documents that also said moderators could not create documents
- changed "ascii version" to "symbol"
- did a few other minor typo corrections

Note that we cannot make this policy cover absolutely everything. But it must be clearly readable and understandable by everyone.

Cheers,
Tim

Freecycle(TM) Trademark and Copyright Policy

[Updated on 2005-03-15 b]

How to Use the Freecycle Trademark

We are doing a really good thing here. And, we are also learning as we go, which means there will always

be evolution and change. Because the Freecycle concept is unique and amazingly successful, there are many who have and who would try to use it for personal gain and profit. For that reason, The Freecycle Network is incorporated as a non-profit organization, and the Freecycle name and logo are trademark protected. We need to do our best to properly use the Freecycle trademark so that we don't lose the right to it.

In legalese, the use of the term "Freecycle" denotes a gifting service which is officially approved by the nonprofit organization "The Freecycle Network," and one that the public can expect to adhere to certain standards. The Freecycle Network must approve any email list or web site that uses the term "Freecycle" in its name and provides any sort of exchange service.

When using the term "Freecycle" please do the following:

1) While "The Freecycle Network" is a trade name, it also functions as a service mark -- i.e., a source indicator -- so it is ok to use a TM with it.

For example: The Freecycle Network(TM)

When used as a trade name (think proper name), the term "Freecycle" may be used in place of "The Freecycle Network" to allow sentences to be more concise.

For example: While The Freecycle Network has been growing by leaps and bounds, Freecycle also remains true to its core mission.

2) In all other cases, the term "Freecycle" must be used as an adjective, never as a noun or verb.

For example:

- Do not say "I'm a freecycler." Do say "I'm a Freecycle member."
- Do not say "Keep on freecyclin!" Do say "Keep on recyclin', my Freecycle friends!"
- Do not say "Freecycling group." Do say "Freecycle group"
- Do not say "Please Freecycle." Do say "Please join a Freecycle group."
- Do not say "There are 10 freecycles in this state." Do say "There are 10 Freecycle groups in this state."
- Do not say "freecycle's membership." Do say "The Freecycle Network's membership."

(Note: new groups may use the word Freecycle in their group name/title, but should not be approved with any variations of the word Freecycle in their name, title or description, like freecycler, freecycling, freecycles.)

3) Attribution Statement. (fancy-speak for a statement attributing ownership of a trademark to someone at the bottom of e-mails, etc.)

At the bottom or within the body of all official Freecycle web sites, articles, documents, press releases, automatic notices, and group home pages the following trademark attribution should appear:

Copyright (c) 2003-2005 The Freecycle Network
(<http://www.freecycle.org>). All rights reserved.

Freecycle and the Freecycle logo are trademarks of The Freecycle Network in the United States and/or other countries.

For an HTML version to include in your group's description, please see:
<http://groups.yahoo.com/group/freecyclesunnyvale/files/Special/>

In group email list footers use the following (in this case include the lines to set it apart):

Freecycle and the Freecycle logo are trademarks of The Freecycle Network in the United States and/or other countries.

To create a footer in your Yahoo group:

- a. Log into Yahoo and go to the group page
- b. Click on Management on the left
- c. Click on Messages on the right
- d. Next to Subject Tag and Footer, click Edit
- e. Enter the text above in the Footer box
- f. Click the Save Changes button

4) The term "Freecycle" in text must always be capitalized to set it off from the surrounding text.
Example: Freecycle groups are great!

5) If you want to use the official Freecycle logo, it must include a TM symbol and appear exactly as it does on <http://www.freecycle.org>.

It is OK to put adornments around it and behind it. Never put anything over any portion of the logo or otherwise obscure or change the basic form of the logo or the TM symbol. The graphic logo's use of lowercase "freecycle" is ok as its design sets it apart.

(Note: new groups must use the official logo, though they are welcomed to adorn it within these parameters.)

6) E-Mail addresses with the word "Freecycle" in them. One should consider using something explanatory in

addition to the word "Freecycle" in their e-mail address or ID for clarity's sake. Example:
FreecycleSpringfield@hotmail.com.

7) On your local Yahoo group sites, articles, press releases & automatic notices: The first "prominent display" or introduction of the mark (i.e., the first time you use the term Freecycle in a document) needs to be distinguished from other text with a TM (to be replaced with an (R) eventually, once the trademark is registered). This is in addition to the above attribution statement (the footer-note statement in point 3). So, a Freecycle group site should have a TM by the logo at the top and a TM by the first use of The Freecycle Network (or of the word Freecycle, whichever comes first. The other instances of Freecycle can be without a TM marking, though it is still important to capitalize or color them to show they are not just common words.

A great example of how to set up a group correctly can be found at:
<http://groups.yahoo.com/group/freecyclesunnyvale/>

- A. In HTML, use the HTML code "Freecycle™" (without the quotes).
- B. For plain ASCII text documents, in email, and in files in a Yahoo group, use "Freecycle(TM)" (without the quotes).
- C. Other documents, use any method available to create the TM superscript
- D. There's no need to use the TM mark more than once per document.
- E. Do not use the TM mark in email addresses, email subject tag lines (such as [freecyclemytown]), group names, or URLs.
- F. Do be sure to include the footer in item 3 above, whenever possible.

TIP: If you are sending an email and wish to add the TM, it makes sense to use the (TM) version rather than the superscript TM symbol (even if you know how to generate the symbol) because many email programs will not display it right to the recipient.

8) OPTIONAL: For further information about trademarks and how to use them properly, see:
<http://www.inta.org/info/faqs.html>
<http://www.uspto.gov/main/trademarks.htm>

9) A current copy of this trademark use document may be obtained at:
<http://freecycle.org/tmfaq.php>

Question and Answers:

What happened to the Freecycle service mark (SM)?
Freecycle formerly used the SM (Service Mark) designation, but for better worldwide uniformity and recognition, we are now using TM instead of SM.

Is it ok for individual email addresses or URLs to include the term "freecycle"?
Yes, but please make sure the word is accompanied by something explanatory, like FreecycleMytownMod.

Do personal emails about Freecycle need to use the TM mark or trademark attribution?
No. Having the trademark attribution in email list footers is enough.

Where are the most common places that "Freecycle" use should be checked?

- Group description/home page
(Management / Description and Appearance / Description - Edit)
- Group email footer text (Management / Messages / Subject Tag and Footer - Edit)
- Group welcome message (Management / Membership / Welcome Message - Edit)
- All automatically sent notices -- especially the Freecycle Etiquette document
- Press releases or other stand-alone documents
- Flyers

What changes should I make to my group's Freecycle Etiquette document?

Make sure all instances of Freecycle are used as an adjective or trade name. Look at the Freecycle etiquette text at <http://freecycle.org/faq.php> for good examples.

Are modified local logo graphics with our TM still ok?
Adding graphics around the official logo is fine and fun. We do need to leave the logo itself unaltered (so you're OK as long as the logo and TM are not covered or obscured in any way).

What happens when the Freecycle mark becomes registered?

When this happens, all occurrences of Freecycle(TM) must change to Freecycle(R), and HTML code "Freecycle™" to "Freecycle®".

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Please note that this email message is intended only for the addressee(s) and contains information that may be confidential and/or copyrighted. If you are not the intended recipient please notify the sender by reply email and immediately delete this email. Disclosure, distribution or reproduction of this email by anyone is strictly prohibited.

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